

CASE

NUMBER:

99.705-

HISTORY INDEX FOR CASE: 1999-205
VERNA HILLS, LTD. VERNA HILLS SUBDIVISION
Complaints - Rates, Service
OF CHRIS WARNER & CHARLES NORTON

IN THE MATTER OF CHRIS WARNER AND CHARLES NORTON VS. VERNA
HILLS NEIGHBORHOOD ASSOCIATION, INC.

SEQ NBR	ENTRY DATE	REMARKS
0001	05/13/1999	Application.
0002	05/18/1999	Acknowledgement letter.
0003	06/03/1999	Satisfy and Answer Order entered, response due 6/14.
M0001	06/09/1999	JOHN ROMPF VERNA HILLS NEIGHBORHOOD-ANSWER TO COMPLAINT
0004	07/14/1999	Order scheduling IC on 8/2/99 at 10:00; briefs due 9/1/99.
M0002	07/19/1999	JOHN H. ROMPF, JR./ATTORNEY-MOTION TO RESCHEDULE INFORMAL CONFERENCE
0005	07/22/1999	Order scheduling an informal conference for all parties on 8/3/99 at 1:30 p.m.
M0003	08/09/1999	EDWARD YANCY ATTORNEY FOR WARNER-LETTER CONCERNING MEMBERSHIP DUES FOR FILE
M0004	08/24/1999	JOHN ROMPF-COPY OF APPLICATION FOR SEWER SERVICE WHEREIN PLAINTIFF WARNER AGREED
0006	08/26/1999	Order extending the due date for the briefs on question of jurisdiction to 11/1.
0007	10/25/1999	IC memo sent to parties; comments, if any, due 11/2/99.
M0005	10/25/1999	EDWARD L. YANCY/COMPLAINANT COUNSEL-MOTION FOR CONTINUANCE TO FILE BRIEF (FAX)
0008	10/27/1999	Order granting ext. of time until 11/15 for both parties to file briefs.
M0006	10/29/1999	EDWARD YANCY COUNSEL FOR COMPLAINANT-MOTION FOR CONTINUANCE TO FILE BRIEF
M0007	11/15/1999	JOHN ROMPF VERNA HILLS NEIGHBORHOOD-BRIEF
M0008	11/17/1999	EDWARD YANCY CHARLES NORTON, CHRIS WA-BRIEF
0009	05/08/2000	Final Order dismissing case for lack of jurisdiction.



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 1999-205
VERNA HILLS, LTD. VERNA HILLS SUBDIVISION

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on May 8, 2000.

See attached parties of record.

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRIS WARNER AND CHARLES NORTON)	
)	
COMPLAINANTS)	
)	CASE NO.
VS.)	99-205
)	
VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.)	
)	
DEFENDANT)	

O R D E R

This matter is before the Commission on the Complaint of Chris Warner and Charles Norton ("Complainants"), in which they allege that the Verna Hills Neighborhood Association, Inc. ("Association") improperly increased its sewer charges to the members of the Association. Complainants allege, among other things, that the Association Board has acted in an arbitrary and capricious manner and that the parties to this case have been involved in litigation concerning Complainants' refusal to renew their membership in the Association.

The threshold issue is whether the Commission has jurisdiction to investigate the allegedly unreasonable increase. The parties to this case filed briefs on this issue on November 15, 1999, and the issue is ripe for Commission decision.

The Positions of the Parties

The Association contends that the Commission lacks jurisdiction because the Association does not offer service to the public at large. Instead, it serves "only

'members' and the by-laws define membership as only those persons or entities who own property in the specific geographical boundary of the platted subdivision."¹ As the Association aptly points out, this Commission has specifically held that, as the Association serves its members, rather than the public at large, it is not a "utility" pursuant to KRS 278.010 and is therefore not subject to Commission jurisdiction.² The Association contends that it has taken no action since the Commission's Order in Case No. 93-315 to change its jurisdictional status.

In response, Complainants argue that the Association should never have been given an "exemption" from Commission jurisdiction,³ that Commission jurisdiction over "all utilities in the state" pursuant to KRS 278.040(2) gives the Commission jurisdiction over the Association; and that there is no Kentucky exemption for "privately owned utilities."⁴ The Complainants contend that the Commission's exemption of the Association is based on a "creative argument" regarding the "meaning of terms like 'public utility' – a term which is not even in the statutes."⁵ The Complainants also contend that the Association has acted outside the "exemption" provided by the Commission in continuing to provide service to the Complainants even after the

¹ Defendant's Brief on Jurisdiction Issue ("Defendant's Brief"), filed November 15, 1999, at 5.

² Case No. 93-315, The Application of Verna Hills Neighborhood Association, Inc. for an Order Authorizing Verna Hills Ltd. to Transfer its Assets to Applicant and for Determination of Jurisdictional Status. (Order dated September 16, 1993), at 3.

³ Co-Complainants' Brief, filed November 15, 1999, at 5.

⁴ Co-Complainants' Brief at 5 – 8.

⁵ Co-Complainants' Brief at 9.

membership in the Association was withdrawn.⁶ Complainants allege that both they and the Association believe that if all property owners do not maintain membership in the Association, then the sewage treatment plant automatically becomes subject to Commission jurisdiction. This common belief, they declare, is their reason for withdrawing their membership.⁷

Discussion

The Commission sees no reason to revisit its decision in Case No. 93-315 that an entity owned by a specific group of people to provide service to themselves rather than to a more indefinite "public" is not a utility pursuant to KRS 278.010 and therefore is not subject to Commission jurisdiction. Complainants' argument concerning alleged distinctions drawn by the Commission between "public" and "private" utilities appears to be based upon a misunderstanding of the Commission's Order in Case No. 93-315. The Commission drew no distinction between "private utilities" and "public utilities," and it did not base its jurisdictional finding on any analysis of the term "public utility."⁸ The conclusion of that Order was that, because the Association would not serve the public, it was not a "utility" as defined by KRS 278.010.⁹ The issue in Case No. 93-315 was whether the entity in question serves the "public." If it does not, it is not a "utility" under KRS 278.010, and it is not subject to Commission jurisdiction pursuant to KRS 278.040.

⁶ Co-Complainants' Brief at 8 – 9.

⁷ Co-Complainants' Brief at 9.

⁸ The Commission notes that it has jurisdiction over numerous privately-owned utilities that do provide service "to the public."

⁹ Order, Case No. 93-315, at 3.

In order to find that an entity provides service "to the public" pursuant to KRS 278.010, this Commission must find that the entity in question provides service to, or stands ready to provide service to, "an indefinite public (or portion of the public as such) which has a *legal right to demand and receive its services or commodities*. There must be a dedication or holding out, either express or implied ... of services to the public as a class." 64 Am.Jur.2d Public Utilities, Section 1 (emphasis added). See also North Carolina ex rel. Utilities Comm'n v. Carolina Tel. & Tel Co., 148 S.E.2d 100, 109 (N.C. 1966) ("One offers service to the 'public' ... when he holds himself out as willing to serve all who apply up to the capacity of his facilities"). The Association has never held itself out as a utility prepared to provide services "to the public as a class" or to "all who apply up to the capacity of [its] facilities." To the contrary: its by-laws specifically state that the Association will not provide service to the general public and will, instead, serve only members of the corporation. In its brief, the Association states that it has never offered service to anyone who resides outside its geographical boundary, and that it has never planned to expand its services to anyone outside that boundary. It has been, and remains, "wholly owned and operated by its members who control it and who are limited to a defined, privileged, limited group of persons who own real estate on platted subdivision property."¹⁰

In summary, the Commission did not, in Case No. 93-315, grant an "exemption" to the Association. It found, instead, that the Association is not a "utility" pursuant to KRS 278.010 for the reasons discussed above. The Commission reaffirms that analysis

¹⁰ Defendant's Brief at 5.

here. Persons who reach agreement among themselves to provide service to themselves do not, by that agreement, form a "utility" as defined by KRS 278.010.

Complainants' second argument is that provision of sewage service to them after they withdrew their membership in the Association automatically rendered the Association a "utility" in any event, since service to them, as non-members, constitutes service "to the public."¹¹ They do not, however, offer any legal authority to support this contention. Nor do they explain why they, as persons who agreed to become members of the Association, and who own residences within the Association's designated geographic area, do not remain materially different, for Association purposes and for purposes of the law, from members of the "public at large."

A dedication of private property to public use "is never presumed without evidence of unequivocal intention." Wilhite v. Public Service Comm'n, 149 S.E.2d 273, 281 (W.Va. 1966). No such intention is even implied here. The mere fact that the Association did not immediately terminate service when Complainants withdrew their membership does not mean that the Association thereby "unequivocally" dedicated its facilities to the "public" service. There is not even the slightest indication in the record that the Association intended to serve the Complainants as members of "the public." Instead, the Association sought to require the Complainants to remain members, bringing suit in Clark District Court for that very purpose.¹² The merits of the suit before Clark District Court are not before this Commission; however, the fact that the suit was

¹¹ Co-Complainants' Brief at 9.

¹² Complaint at 4, citing Verna Hills Neighborhood Association, Inc. v. Chris Warner (Clark District Court, Case No. 99-S-0028); Verna Hills Neighborhood Association, Inc. v. Charles Norton (Clark District Court, Case No. 99-S-0029).

brought provides further evidence that the Association intends to serve only its membership.

Based on the foregoing analysis, the Commission, having been sufficiently advised, HEREBY ORDERS that this case is dismissed for lack of jurisdiction.

Done at Frankfort, Kentucky, this 8th day of May, 2000.

By the Commission

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

NOV 15 1999

GENERAL COUNSEL

CHRIS WARNER)
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AND)

CHARLES NORTON)
701 Princeton Drive)
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CO-COMPLAINANTS)

VS.)

NO. 99-205

VERNA HILLS NEIGHBORHOOD)
ASSOCIATION, INC.)

DEFENDANT)

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PUBLIC SERVICE
COMMISSION

CO-COMPLAINANTS' BRIEF

Pursuant to the request of the Public Service Commission (hereinafter "PSC"), the following brief is submitted on the issue of PSC jurisdiction over Verna Hills Neighborhood Association, Inc. Without reiterating all of the facts set forth in the Complaint, the Co-Complainants offer the following summary of facts before discussing the law of the Commonwealth of Kentucky and its application in this dispute.

FACTS

Prior to August of 1993, Verna Hills Ltd., a Kentucky corporation, owned and operated the sewage treatment plant which serviced the subdivision property owners of Verna Hills in Clark County, Kentucky. At that time Verna Hills, Ltd. was a privately owned utility subject to the oversight authority of the PSC.

Because of rate issues and adequacy of service issues, the property owners of Verna Hills devised a plan to purchase the sewage treatment plant through the Verna Hills Neighborhood Association, Inc. (hereinafter referred to as "Defendant" or "Neighborhood Association"), also a Kentucky corporation. Application was tendered to the PSC by the Board of the Defendant, a copy of which is in the records of the PSC under case number designated 93-315.

In that Application the Defendant made specific allegations which formed the basis of the PSC decision to exempt the Defendant from PSC oversight, to wit:

(k) Service will be provided only to members of Verna Hills Neighborhood Association, Inc., not the general public. The assessments charged for sewage treatment service will be equal to the cost of providing such services. Applicant will not be making a profit ...

(l) Applicant requests a determination that upon transfer of the sewage treatment facility to applicant, the applicant will not be subject to the jurisdiction of the Public Service Commission because it will not be operating the system 'for the public' or 'for compensation'.

In Re The Matter of The Application of Verna Hills Neighborhood Association, Inc., Commonwealth of Kentucky, Before the Public Service Commission, Case No. 93-315.

When the membership, all of the members (100%) agreed to ratify the Defendant's decision to purchase the sewage treatment facility, an Application for Sewer Service (a copy of which has been provided to the PSC by the Defendant), was signed by each member of the Neighborhood Association. The Application for Service set forth the rates agreed upon and the requirement that all "sewer subscribers be a member in good standing of the Association." The Board members of the Neighborhood Association told the home owners the only way the Defendant could prevent the PSC from regulating the sewage treatment plant rates and service was for every single home owner to become a MEMBER of the Verna Hills Neighborhood

Association. The membership fee was set at \$20.00 per year; the one time household charge for purchase of the plant was \$300.00 and the rate for sewage treatment service was calculated and set at \$20.00 per month for each member.

In 1996 the Board of Directors of the Verna Hills Neighborhood Association, Inc. voted to increase the sanitary sewer service rates it charged to residents of the Verna Hills subdivision. The Board of Directors of Verna Hills Neighborhood Association, Inc. claimed the rate increase was necessary to pay increased costs of operation plus to accumulate a capital reserve account for the purpose of replacing the existing sewage treatment plant. The Co-Complainants in addition to many other members of the Verna Hills Neighborhood Association, disagreed with the decision of the Board of Directors and requested in January 1997 that the rates not be increased until a study could be conducted by an engineer who was qualified in the area of water and wastewater treatment plants. A total of 58% of the membership signed a petition protesting the rate increase, but the Board of Directors ignored the membership and enacted the rate increase. The Board of Directors of Verna Hills Neighborhood Association, Inc. refused to resolve the issues in dispute before instituting the increased rate structure, but resolved to conduct a feasibility study to determine whether the sewage treatment plant needed to be totally replaced within ten years. *No feasibility study was ever conducted.* The Defendant, through the Hon. John Rompf, recently filed a copy of a 4/17/97 letter to Jim Green from Randall Palmer, Palmer Engineering, Winchester, Kentucky, claiming Mr. Palmer performed a feasibility study to determine whether the sewage treatment plant needed to be replaced. Counsel for the Co-Complainants telephoned Mr. Palmer about his "visual inspection" of the sewage treatment plant and Mr. Palmer expressly stated he was not hired to conduct a feasibility study to determine whether and/or when the sewage treatment plant might need to be replaced. The Defendant,

through its counsel and Board representatives also admitted during the fact finding conference conducted by the Hon. Amy Dougherty on 8/2/99 that the 2/18/97 letter from Jerry Delaney, a salesman of waste water treatment equipment, was not a feasibility study and was not relied upon in their decision to increase service rates and accumulate funds to pay for plant replacement. So what information did the Board of Directors rely on to determine the sewage treatment plant needed to be replaced within the next ten years? And what did the Board of Directors of the Defendant rely upon to substantiate their decision to increase the rates in 1996?

When the Co-Complainants put these questions to their Neighborhood Association Board Members back in 1997 their questions were ignored and the Board of Directors of Verna Hills Neighborhood Association, Inc. refused to act on the Co-Complainants' request to consult expert technical advisors regarding the proposed plant replacement. On April 15, 1999, while standing outside the Clark District Courtroom, Mr. Butch McCord, a Board Member of the Defendant, stated to this counsel if the Co-Complainants are in disagreement with the Board of Directors and no longer wish to be members of the neighborhood association, the Co-Complainants can simply sell their homes and move somewhere other than Verna Hills subdivision.

Because of the arbitrary and capricious conduct of the Board of Directors of Verna Hills Neighborhood Association, Inc., the Co-Complainants in 1998 refused to renew their membership in the Verna Hills Neighborhood Association and have maintained their refusal to renew their membership to date. The Verna Hills Neighborhood Association, Inc. brought suit in Clark District Court against the Co-Complainants (Verna Hills Neighborhood Association, Inc. v. Chris Warner, Clark District Court, Small Claims Division, Case No. 99-S-0028 and Verna Hills Neighborhood Association, Inc. v. Charles Norton, Clark District Court, Small Claims

Division, Case No. 99-S-0029) in an effort to force the Co-Complainants to renew their membership in the neighborhood association because the Board of Directors did not want the Verna Hills Neighborhood Association, Inc.'s sanitary sewer services to be subject to Public Service Commission rules and regulations.

When the Co-Complainants filed their Complaint with the PSC, they were not members of the Neighborhood Association. The Defendant has now (after the fact) amended its by-laws to change the definition of membership so as to combat this attempt by the Co-Complainants to involve the PSC in the rate setting procedures of the Defendant.

ARGUMENT

The Co-Complainants first argue that the Defendant should never have been given an exemption from PSC jurisdiction over rates and service. The PSC was created by the Kentucky General Assembly to insure fair and uniform rates, to prevent unjust discrimination, and to regulate companies (most often monopolies) providing certain special services and/or products to the public. The Supreme Court of Kentucky in Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d. 460 (1994), went on quite at length about the core purpose of the PSC and breadth of its jurisdiction. KRS 278.040 is pretty plain spoken about the exclusive jurisdiction of the PSC over "all utilities" regarding rates and services. The Courts have reinforced this reading of the statute in Simpson County Water District v. City of Franklin, supra. p. 462-463. It is confusing that the Courts use the terminology "public utilities" instead of the word "utilities." The statutory language of KRS 278.040(2) says the PSC has jurisdiction over "all utilities in the state." So the issue in this case is what, under the statutes, regulation and cases in the Commonwealth of Kentucky, did the Kentucky General Assembly mean when it

defined the term "utility" and does the Defendant come within that definition as it is set forth in Kentucky's law.

Clearly, if the term "all utilities" is given its plain meaning, then the Defendant is not exempt under any reading of the statutes of the Commonwealth of Kentucky wherein the PSC derives its jurisdiction. There is no statutory exemption for privately owned and operated utilities. In the past, the Kentucky General Assembly has taken affirmative measures to exclude certain entities from PSC jurisdiction. For example, the Courts have construed KRS Chapter 278 to exclude sanitation districts from PSC jurisdiction because the General Assembly enacted a separate chapter of the Kentucky Revised Code applicable specifically to sanitation districts. See Boone County Water v. Public Service Commission, Ky., 949 S.W.2d 588 (1997).

Municipalities and political subdivisions are exempted in part, but not entirely from the PSC jurisdiction. The PSC still maintains ultimate control over rates and services according to our states highest Court. See Simpson County Water District v. City of Franklin, supra at p. 462. There is nothing in the statutes or the case law of Kentucky where privately owned and operated utility companies have been summarily or even partially exempted from the jurisdiction of the PSC based on their private v. municipal status.

The Defendants have relied upon the PSC Order of September 20, 1993 (Case No. 93-315 filed with the PSC) as the basis for their claim of exemption from PSC jurisdiction. In that Order the PSC defined the Defendant as a utility, but then exempted it from PSC jurisdiction on the basis the Defendant didn't fall into the category of a "public utility." Where is the term "public utility" set forth in any definition of KRS 278.010 or KRS 278.040?

The Kentucky General Assembly was of assistance in defining the term "utility" in KRS 278.010(3)(f) to include:

“...[A]ny person, who owns, controls, or operates or manages any facility used or to be used for or in connection with:

(f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district.”

The term “person” includes a corporation, like the Defendant. KRS 278.010(1)&(2)

The only place the word “public” appears in the statutory definition is in the phrase “treatment of sewage for the public.” It is a long leap from this very ambiguous phrase to the conclusion that the Kentucky General Assembly intended to somehow exempt privately owned utilities from the PSC jurisdiction over rates and service. This counsel has found no Kentucky case on which to base the exemption. The PSC relied on cases from Pennsylvania, North Carolina, Montana, and Connecticut in construing the statutes of the Commonwealth of Kentucky to exempt the Defendant from PSC jurisdiction. Those cases are not binding authority in the Commonwealth of Kentucky and should not be referenced as judicial interpretation of legislative enactments of the Kentucky General Assembly. It may be the PSC is faced with a case of first impression where they don’t have the benefit of any Kentucky judicial guidance expounding on the statutory terminology. If that is the situation, then the mandate they do have and which is not ambiguous is to exercise their authority to protect the consumer from arbitrary and unreasonable conduct at the hands of ALL UTILITIES pursuant to their enabling legislation KRS 278.040.

The PSC is a creature of statute and has only those powers which are granted to it by the Kentucky General Assembly. Boone County Water v. PSC, supra p. 591. The Co-Complainants take the position that the PSC was created by the General Assembly to protect the citizens of the

Commonwealth of Kentucky from arbitrary and unreasonable conduct engaged in by any and all utilities which were not specifically excluded from the PSC jurisdiction; that includes the Defendant. Their position is consistent with the manner in which the Courts have interpreted KRS Chapter 278. See Simpson County Water District v. City of Franklin, supra., Boone County Water v. PSC, supra at p. 591, citing Croke v. PSC, Ky. App., 573 S.W. 2d 927 (1978).

The only judicial word we have on this issue is in the case of Louisville & Jefferson County Metropolitan Sewer District v. Tarrytowne Sanitation Company, et al., Ky. App., 818 S.W. 2d 267 (1991). In that case the trial court ruled that the amendments to KRS 278.010 allowed the PSC to regulate private sewage treatment plants and the Kentucky Supreme Court didn't agree or disagree with that trial court ruling.

The Co-Complainants also argue that even if the PSC exemption is legal, the Defendant has operated outside that exemption by continuing to provide services to the Co-Complainants after the Co-Complainants withdrew their membership from the Neighborhood Association. The Co-Complainants voluntarily removed themselves from the membership of the Neighborhood Association because of the issues in this dispute and are therefore by virtue of their exclusion from the Neighborhood Association, members of the public. The Defendant has acknowledged that Neighborhood Association membership was based on two criteria: (1) property ownership, and (2) voluntary association and payment of dues to the Neighborhood Association. The Defendant's efforts to force collection of the membership fee from the Co-Complainants through judicial action (Clark District Court) was symbolic of the Defendant's belief that property owners who didn't maintain Neighborhood Association membership were outside the "privileged class" of sewer service recipients which qualified the Defendant for PSC jurisdictional exemption. And as indicated in the letter of 5/1/98 to Chris

Warner from Rebecca Frye, if all property owners (100%) didn't maintain membership in the Neighborhood Association, then the sewage treatment plant would be subject to PSC jurisdiction (copy of letter attached to Complaint as Exhibit F). That is exactly the position of the Co-Complainants, and exactly why they refused to renew their membership in the Neighborhood Association. From the moment the Co-Complainants separated themselves from the membership, their goal was to bring the sewage treatment plant within the jurisdiction of the PSC. According to PSC definition of the term "public utility" and for purposes of this Complaint, and at the time this Complaint was filed, the Co-Complainants were the "public" in the statutory phrase "treatment of sewage for the public" set forth in KRS 278.010(3)(f).

The Kentucky General Assembly created the PSC to protect the consumer in all matters of utility rates and service, not craft creative arguments about the meaning of terms like "public utility" - a term which is not even in the statutes. "Public Utility" is not the term used by the General Assembly. "All Utilities" is the term written in KRS 278.040, and to ignore the breadth of PSC jurisdiction over "ALL UTILITIES" is contrary to the purpose and intent of the statute. The Co-Complainants have plead their case to the PSC because the PSC was created to protect them. They ask that the PSC exercise its statutory jurisdiction to address the substantive issues of the Complaint.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief was served on the 11 day of
November, 1999, by mailing same, postage prepaid, to the following:

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November 12, 1999

Public Service Commission
730 Schenkel Lane
Frankfort, KY 40602

Re: Warner and Norton vs. Verna Hills
Case No. 99-205

Gentlemen:

Enclosed are the original and 10 copies of my brief on the issue of jurisdiction pursuant to the Commission's Order of July 14, 1999.

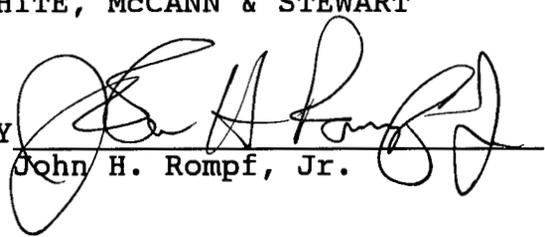
Also enclosed is my file copy which I ask you to date stamp "filed" and return to me.

Thanks for your cooperation.

Very truly yours,

WHITE, McCANN & STEWART

BY


John H. Rompf, Jr.

JHR:slp
Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

IN THE MATTER OF:

CHRIS WARNER and
CHARLES NORTON

COMPLAINANTS

VS.

DEFENDANT'S BRIEF ON
JURISDICTION ISSUE

NO. 99-205

VERNA HILLS NEIGHBORHOOD
ASSOCIATION, INC.

DEFENDANT

* * * * *

By Order entered July 14, 1999, the Commission ordered that Briefs be submitted to it on the question of jurisdiction in this matter on or before September 1, 1999. By Order entered August 26, 1999, the due date for Briefs was extended to November 1, 1999. Upon Motion of the Complainants the time for filing of Briefs was extended to November 15, 1999, by Order entered October 27, 1999.

STATEMENT OF FACTS

Verna Hills Neighborhood Association (hereinafter "the Neighborhood Association") operates a package sewer treatment plant (hereinafter "the plant") with collection appurtenances in Clark County, Kentucky serving solely those persons who own homes in Verna Hills Subdivision as shown in Plat Book 4, page 75, Clark County, Kentucky.

By Order entered September 16, 1993, in Case No. 93-315, the Commission exempted the Neighborhood Association from the jurisdiction of the Commission finding:

8. The characterization of service as public depends "upon whether or not it is open to the use of the public who may require it, to the extent of its capacity." Ambridge v.

Pub. Serv. Comm'n of Pennsylvania, 165 A.47, 49 (Pa. Super. 1933). "One offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities." North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966).

9. After the proposed transfer is completed, the sewage treatment facilities will serve a defined, privileged, and limited group — the Neighborhood Association's members. The facilities will not be serving the public. The Neighborhood Association will not, therefore, be a utility. KRS 278.010. See also Lockwood Water Users Ass'n v. Anderson, 542 P.2d 1217 (Mont. 1975); Re Stonecrest Manor Water Service, 13 PUR3d 123 (Conn. P.U.C. 1956).

Based upon those findings, the Commission ordered:

5. Upon completion of the transfer, the Neighborhood Association will not be a utility subject to Commission jurisdiction.

The initial by-laws of the Neighborhood Association in existence in September, 1993 provided in Article X regarding membership as follows:

MEMBERSHIP

Membership in the Corporation shall be extended to any individual person or family residing within the geographical area of the Verna Hills Neighborhood Corporation, except that they shall be the owner of record of the property on which they reside. Membership rights may be assigned from an owner to a renter, in writing. Membership shall commence upon payment of annual dues. . . . Owners of building lots within the boundaries of the Verna Hills Neighborhood Corporation shall not be eligible for membership unless they shall provide an affidavit that it is their intent to construct a residence on said lot for their own dwelling. (Emphasis ours)

These articles were amended regarding the plant on

February 17, 1994 in Article XV as follows:

Sewage service shall be provided to each member of the corporation upon the following terms and conditions.

- a. The corporation hereby adopts, ratifies and makes as its own all rates, rules, classifications and regulations of Verna Hills Neighborhood Association, Inc. on file with the Public Service Commission effective at the time of transfer of assets to the corporation.
- b. A member desiring sewer service shall pay the rates and shall comply with all the rules and regulations hereby adopted and ratified.
- c. Further, a member shall pay to the Treasurer of the corporation an initial application fee of \$20.00.
- d. The Board shall have the power and authority to modify from time to time all rates, rules, classifications and regulations pertaining to the sewer system.
- e. The Board may discontinue or refuse sewage service to a member for failure to pay required fees or for failure to comply with the duly adopted rules and regulations of the Board pertaining to the sewer system.
- f. **Service shall be provided only to members of the corporation, not to the general public, said members being property owners in Verna Hills Subdivision.**
- g. Assessments charged by the corporation for sewage treatment service shall be equal to the cost of providing such service. The Board shall adjust the rates from time to time to cover that cost without making a profit from the facility's operation. **The Board may not expand the capacity of the sewage treatment facility beyond the capacity needed to meet the needs of the members of the corporation. (Emphasis ours)**

Paragraph g of Article XV was once again amended on October 10, 1996 as follows:

g. Assessments charged by the Corporation for sewage treatment service shall be equal to the cost of providing service, for the long term. The Board shall adjust the rates from time to time to cover that cost and provide for long term service, hopefully without the necessity for special assessments for repair or replacement of the Sewer Treatment Plant. The Board will be responsible for proper administration of monies gathered, account arrearages, etc. **The Board may not expand the capacity of the sewage treatment facility beyond the capacity needed to meet the needs of the members of the corporation. (Emphasis ours)**

Finally, after this proceeding was commenced, in order to clarify certain matters, the Board of Directors, on August 23, 1999, adopted changes to Article X and Article XV of their by-laws as follows:

ARTICLE X -- MEMBERSHIP

Members of the Corporation shall be any person or entity who owns any real property located in Verna Hills Subdivision as shown in Plat Book 4, Page 75, Clark County Clerk's Office, and who receives sewer service from the Verna Hills sewer plant. Membership rights may be assigned by the owner to a person occupying a residence in said subdivision in writing delivered to the Secretary of the Corporation.

ARTICLE XV - SEWAGE TREATMENT SYSTEM

c. This paragraph is hereby deleted from the By-Laws.

e. The Board may discontinue or refuse sewer service to a member for failure to pay for sewer service or failure to comply with the duly adopted rules and regulations of the Board pertaining to the sewer plant.

(Emphasis ours)

Essentially the amendment further defined "membership"

and deleted the membership annual fee.

The fact of the matter is that since September 16, 1993, when the Neighborhood Association's acquisition of the sewer plant was approved, there has been absolutely no change in its by-laws, policies or provision of service which would subject the Neighborhood Association to Commission jurisdiction. Since its inception the Neighborhood Association has only served persons who owned property in the Verna Hills Subdivision as platted in Plat Book 4, Page 75, in the Clark County Clerk's Office. It has never offered service to anyone who resides outside of that geographical boundary and never planned an expansion. Its by-laws provide that the plant will serve only "members" and the by-laws define membership as only those persons or entities who own property in the specific geographical boundary of the platted subdivision. It is wholly owned and operated by its members who control it and who are limited to a defined, privileged, limited group of persons who own real estate on platted subdivision property.

ARGUMENT OF LAW

Jurisdiction of the Public Service Commission is set forth in KRS 278.040 which provides as follows:

(1) The public service commission shall regulate utilities and enforce the provisions of this chapter. . . .

(2) The jurisdiction of the commission shall extend to all utilities in this state. . . .

(Emphasis ours)

For the purposes of KRS Chapter 278, "utility" is

defined in KRS 278.010(3) as follows:

(3) "Utility" means any person except a city, who owns, controls, or operates or manages any facility used or to be used for or in connection with:

(f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district; (Emphasis ours)

It is undisputed that the Neighborhood Association treats sewage for compensation so the question becomes whether or not its endeavors are for the "public".

As noted above, the Commission has previously, in September, 1993, found the Neighborhood Association's operations were not for the "public" and therefore not subject to the jurisdiction of the Commission. Thus, the question becomes, has the Neighborhood Association taken any actions since the adoption of the Commission's previous Order which would make it subject to Commission jurisdiction.¹

¹Parenthetically, it should be noted that the Neighborhood Association's action in the collection and transportation of sewage to the Neighborhood Association's package treatment plant are not subject to Commission jurisdiction (Boone County Water and Sewer District vs. Public Service Commission, Ky., 949 S.W.2d 588 (1997)). In that case the Supreme Court held that sanitation districts are not a "utility" within the jurisdiction of the Commission. The Court concluded that because the collection and transmission of sewage was not mentioned within KRS 278.010(3)(f) it was not intended to be subject to Commission regulation. For this reason, only the sewage treatment functions of the Neighborhood Association could be subject to Commission regulation.

In fact, in the present case, the Neighborhood Association has taken great care since the September, 1993 Order not to offer a service to the public. In its initial Articles the Neighborhood Association stated that membership would "be extended to any individual person or family residing within the geographical area of the Verna Hills Neighborhood Corporation, except that they shall be the owner of record of the property on which they reside." On August 23, 1999, the Neighborhood Association clarified its membership policy by stating that "Members of the Corporation shall be any person or entity who owns any real property located in Verna Hills Subdivision as shown in Plat Book 4, Page 75, Clark County Clerk's Office, and who receives sewer service from the Verna Hills sewer plant." Additionally, twice since 1993 the Neighborhood Association has provided that service will not be provided to the general public and has also stated that the capacity of the plant may not be expanded beyond the needs of its members. (See amendment to Article XV, paragraphs (b) and (g) on February 17, 1994 and amendment to Article XV, paragraph (g) on October 10, 1996.) Thus, the only change in the by-laws since the Commission's previous Order was to further define the limitations on membership in the Corporation and to clarify that it may not offer service to the public.

There is little law in Kentucky on what constitutes a utility which offers service to the public. However, in Austin vs. City of Louisa, Ky., 264 S.W.2d 662 (1954), the Kentucky

Court of Appeals held that even though an owner of a private water line charged a group of 19 other homeowners a fee for the connection fee for them to tap on to his private water line, this did not constitute distribution of water for compensation and the line was not a "public utility" within the meaning of KRS 278.010. The Court seemed to rely upon the fact that in that case there were a limited number of persons using the water line and the fee charged to them was reasonable for the connection. In the present case, the service provided is limited to only members of the Association and membership is limited to the geographical area of Verna Hills Subdivision.

There is, however, ample authority from other sources and jurisdictions defining what it means to be a "public utility" or utility providing service to the "public".

Whether or not a utility is public or private has been discussed in 73B C.J.S., Public Utilities, Section 3, wherein it is stated:

The test is, therefore, whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contra-distinguished from holding himself out as serving or ready to serve only particular individuals.

The public or private character of the enterprise does not depend, however, on the number of persons by whom it is used, but on whether or not it is open to the use and service of all members of the public who may require it, to the extent of its capacity, .

. .

Furthermore, in 64 Am Jur 2d, Public Utilities, Section

1, it is stated that:

As its name indicates, the term "public utility" implies a public use and service to the public, and indeed, the principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public (or portion of the public as such) which has a legal right to demand and receive its services or commodities. There must be a dedication or holding out, either express or implied, of product or services to the public as a class.

These general statements of law have had wide acceptance. For instance, in Tennessee the Court of Appeals has ruled in Johnson City vs. Milligan Utility District, 276 S.W.2d 748 (1955) that:

Whether business operation may be classed as that of a public utility is controlled by facts of a particular case, and question generally depends upon whether operation has been held out as public service, upon whether service is in fact of a public character, and whether it may be demanded on basis of equality and without discrimination by all members of public or obtained by permission only.

Similarly, in Ford Hydro-Electric Co. vs. Town of Aurora, 240 N.W. 418 (1932), the Supreme Court of Wisconsin held that a test of public utility depends on what it does rather than what it has the power to do. It does not depend on the number of customers but whether or not the plant was built and operated to furnish power to the public generally.

Similarly, in New Mexico, the Supreme Court has considered the issue of what is a public utility. In Socorro Electric Cooperative, Inc. vs. Public Service Company of New Mexico, 348 P.2d 88 (1959), the Court, citing 73 C.J.S., Public

Utilities, Section 2, page 992, held that the test of whether or not a person is a public utility is whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public as a class or to a limited portion of it, as counter-distinguished from holding himself out as serving or ready to serve only particular individuals. It depends not upon the number of persons but upon whether or not it is open to use and service of all members of the public who may require it to the extent of its capacity. (See also Lockwood Water Users Association vs. Anderson, 542 P.2d 1217 (Montana, 1975) and Llano, Inc. vs. Southern Union Gas Company, 399 P.2d 646 (New Mexico, 1965) and State of North Carolina vs. Carolina Telephone and Telegraph Company, 148 S.E.2d 100 (1966), and Waltman vs. Pennsylvania Public Utility Commission, 596 A.2d 1221 (1991), for same holding.) Likewise, in El Vadito de los Cerrillos Water Association vs. New Mexico Public Service Commission, 858 P.2d 1263 (N.M., 1993), the Court held that even though the private water association sold water to certain other customers outside of its initial jurisdiction, it did not transform it into a "public utility" subject to the jurisdiction of the Public Service Commission.

Finally, in West Virginia, in Wilhite vs. Public Service Commission, 149 S.E.2d 273 (1966), the Supreme Court of West Virginia once again looked to the test of whether a firm is a public utility by examining whether or not the firm held itself

out either express or implied as engaged in the business of supplying its product or service to the public as distinguished from serving only particular individuals. In that case, like in the present case, there is no evidence that the firm ever held out to serve the public with services. The Court held:

Although a dedication to public service or a holding out to supply the public may be implied, it will not be presumed from the fact that the product or service is a product or service usually supplied by a utility; such dedication or holding out is never presumed without evidence of unequivocal intention. Wilhite, supra, page 281.

In the present case, the Neighborhood Association only supplies service to members or the persons who live in Verna Hills Subdivision and no others. It has not offered its services to any others and as a matter of policy does not serve any others and cannot build capacity to serve others.

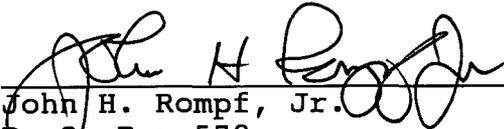
The bottom line in this case is that absolutely no change has been made in the services provided or customer base of the Neighborhood Association since this Commission's decision in 1993. Furthermore, no change has been made to any by-law or policy of the Association other than to further define and restrict the manner and scope of service of the Association since 1993. Finally, there have been no facts pled or shown which would support a finding that the Neighborhood Association has served or offered to serve the "public" as that term has been defined by the vast majority of case law. The record in this case was then and is now abundantly clear that the Neighborhood Association's operations are private in nature and thus not

subject to the jurisdiction of the Public Service Commission.

Respectfully submitted,

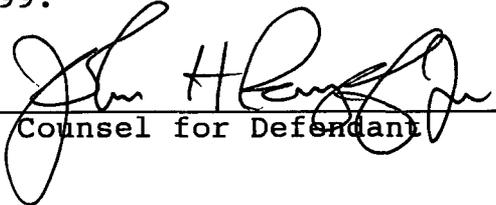
WHITE, McCANN & STEWART

BY


John H. Rompf, Jr.
P. O. Box 578
Winchester, KY 40392-0578
(606) 744-2551

ATTORNEYS FOR DEFENDANT

I certify a true copy of the foregoing has been served upon Hon. Edward L. Yancy, P. O. Box 4308, Lexington, KY 40544-4308, and Hon. Amy E. Dougherty, Public Service Commission, P. O. Box 615, Frankfort, Kentucky 40601, this 15th day of November, 1999.


Of Counsel for Defendant

K:\JHR\verna-hills-brf

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

OCT 28 1999

CHRIS WARNER
CHARLES NORTON

GENERAL COUNSEL
COMPLAINANTS

VS.

MOTION FOR CONTINUANCE
TO FILE BRIEF

NO. 99-205

VERNA HILLS NEIGHBORHOOD
ASSOCIATION, INC.

OCT 29 1999

DEFENDANT

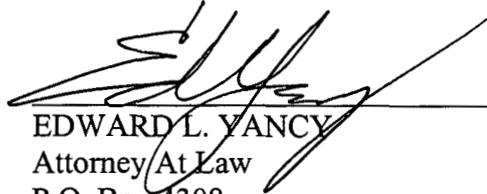
PUBLIC SERVICE
COMMISSION

Comes counsel for the Complainants, and moves the Public Service Commission for a continuance of the date for filing briefs on the issue of jurisdiction from November 1, 1999, to November 15, 1999.

Counsel for the Complainants is a sole practitioner. For the past two months my time has been consumed completely by a civil products liability case which is now in the third week of trial in the Shelby Circuit Court. I apologize to the PSC for the delay, but the course, progress and scheduling of the trial was beyond my control. I respectfully request the additional time to prepare the brief.

RECEIVED
OCT 29 1999
PUBLIC SERVICE
COMMISSION

Respectfully submitted,



EDWARD L. YANCY
Attorney At Law
P.O. Box 4308
Lexington, Kentucky 40544-4308
Tel. (606)252-7802
Fax. (606)255-1882
Counsel for Complainants

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion for Continuance was served on the
25th of October, 1999, via facsimile transmission to the following:

Hon. John H. Rompf, Jr.
P.O. Box 578
Winchester, Kentucky 40392
Fax. (606)744-2583
Counsel for the Defendant

Hon. Amy Dougherty
Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40602
Fax. (502)564-7279

*Mailed
10/27/99
Ely*


EDWARD L. YANCY



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

October 27, 1999

To: All parties of record

RE: Case No. 99-205

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Verna Hills Neighborhood Association
P. O. Box 4377
Winchester, KY 40992 4377

Butch McCord
109 Robyn Drive
Winchester, KY 40391

Chris Warner
219 Robyn Drive
Winchester, KY 40391

Charles Norton
701 Princeton Drive
Winchester, KY 40391

Honorable Edward L. Yancy
Attorney at Law
P. O. Box 4308
Lexington, KY 40544 4308

Honorable John H. Rompf
Attorney for Verna Hills
White, McCann & Stewart
125 South Main Street
P.O. Box 578
Winchester, KY 40392 0578

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRIS WARNER AND)	
CHARLES NORTON)	
COMPLAINANTS)	
V.)	
)	CASE NO. 99-205
VERNA HILLS NEIGHBORHOOD)	
ASSOCIATION, INC.)	
DEFENDANT)	

O R D E R

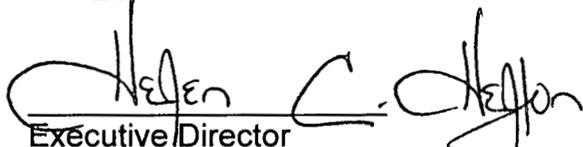
On October 26, 1999, Chris Warner and Charles Norton, by Counsel, filed a Motion for extension of time via facsimile copy. They request to file their brief on the issue of whether the Commission lacks jurisdiction over the Verna Hills Neighborhood Association, Inc. by November 15, 1999. The briefs were due November 1, 1999.

The Commission, having reviewed the Motion and having been otherwise sufficiently advised, HEREBY ORDERS that briefs of both parties on the question of the jurisdiction of Verna Hills Neighborhood Association, Inc. shall be submitted to the Commission by no later than November 15, 1999.

Done at Frankfort, Kentucky, this 27th day of October, 1999.

ATTEST:

By the Commission


Executive Director

(FAX)

99-205

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

RECEIVED

OCT 25 1999

In the Matter of:

PUBLIC SERVICE
COMMISSION

**CHRIS WARNER and
CHARLES NORTON**

COMPLAINANTS

VS.

**MOTION FOR CONTINUANCE
TO FILE BRIEF**

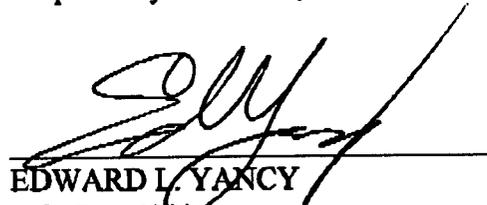
**VERNA HILLS NEIGHBORHOOD
ASSOCIATION, INC.**

DEFENDANT

Comes counsel for the Complainants, and moves the Public Service Commission for a continuance of the date for filing briefs on the issue of jurisdiction from November 1, 1999, to November 15, 1999.

Counsel for the Complainants is a sole practitioner. For the past two months my time has been consumed completely by a civil products liability case which is now in the third week of trial in the Shelby Circuit Court. I apologize to the PSC for the delay, but the course, progress and scheduling of the trial was beyond my control. I respectfully request the additional time to prepare the brief.

Respectfully submitted,



EDWARD L. YANCY
P.O. Box 4308
Lexington, Kentucky 40544-4308
Tel. (606)252-7802
Fax. (606)255-1882
Counsel for the Complainants

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Hon. John H. Rompf, Jr.
P.O. Box 578
Winchester, Kentucky 40392
Fax. (606)744-2583
Counsel for the Defendant

Hon. Amy Dougherty
Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40602
Fax. (502)564-7279


EDWARD L. YANCY



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

October 25, 1999

Verna Hills Neighborhood Assoc.
P. O. Box 4377
Winchester, KY 40992-4377

Butch McCord
109 Robyn Drive
Winchester, KY 40391

Chris Warner
219 Robyn Drive
Winchester, KY 40391

Charles Norton
701 Princeton Drive
Winchester, KY 40391

Honorable Edward L. Yancy
Attorney at Law
P. O. Box 4308
Lexington, KY 40544-4308

Honorable John H. Rompf, Jr.
Attorney for Verna Hills
P. O. Box 578
Winchester, KY 40392-0578

RE: Case No. 99-205

Gentlemen:

Attached is a copy of the memorandum that is being filed into the record of the above-referenced case. If you have any comments that you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. Should you have any questions regarding same, please contact Amy Dougherty at (502) 564-3940, Extension 257.

Sincerely,

Helen C. Helton
Executive Director

Attachments



INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

FILED
OCT 25 1999
PUBLIC SERVICE
COMMISSION

TO: Main Case File No. 99-205
Chris Warner and Charles Norton, Complainants v.
Verna Hills Neighborhood Association, Inc., Defendant

FROM: Amy Dougherty 

DATE: October 25, 1999

RE: Informal Conference Memorandum

An informal conference was held at the Commission's offices. Attached as Exhibit A is a list of those who attended. All parties presented their views of the facts and disputes. The basic question discussed was "What constitutes membership in the neighborhood association?" The Complainants view membership as defined by the bylaws, and since they do not meet the definition, they believe that they are not members. Verna Hills Neighborhood Association believes that the Complainants are members because they are accepting the sewer service. Membership in the neighborhood association, according to the Defendant, is irrelevant to the public utility status of Verna Hills.

During the informal conference, parties and Staff discussed each of the allegations in the Complaint. The Defendant changed or clarified some of its responses at the informal conference as follows:

- Paragraph 3 is now admitted.
- Paragraph 5 is now admitted.
- As to Paragraph 11, Defendant admits that issues were not resolved and admitted that it "resolved to conduct a feasibility study to determine whether the sewage treatment plant needed to be totally replaced within 10 years."
- As to Paragraph 12, Verna Hills states that the Delaney and Associates, Inc., report presented a proposal but that it was not an offer, and the proposal contained projected costs which were budgetary numbers and only guesses for replacing the entire treatment plant.

- As to the First Paragraph 14, Verna Hills denies that the Delaney report was an expert report and instead contends that it was the report of a sales representative.
- As to the Second Paragraph 14, Verna Hills admits the discussion about a suit in Clark District Court, Small Claims Division, but denies that it brought suit because the Board of Directors of Verna Hills did not want it to be subject to the Public Service Commission's rules and regulations.
- As to Paragraph 16, Verna Hills admits that the co-complainants are not associated with Verna Hills Neighborhood Association but does not admit that a failure to associate is "voluntary."
- Verna Hills admits Paragraph 17.
- As to Paragraph 18, Verna Hills denies the allegations contained therein because dues do not constitute membership in the Association, but rather service does.
- As to Paragraph 21, Verna Hills admits all allegations except that the membership dues do not include the assessment for capital improvements, rather that assessment is a separate fee. The membership dues are for the betterment of the community as a whole and not specifically related to sanitary sewer service.
- Paragraph 22 is now admitted.

At the informal conference, one of the complainants supplied a copy of his bill, which is attached as Exhibit B and contains the charges assessed.

Attachments

In Re: CHRIS WARNER AND CHARLES NORTON
VS. VERNA HILLS NEIGHBORHOOD ASSOCIATION

CASE NO. 99-205

=====
August 3, 1999 Informal Conference

Please sign in:

NAME	REPRESENTING
<u>Amy Ed Dougherty</u>	<u>PSC</u>
<u>Charles R. McIntosh</u>	<u>Verna Hills</u>
<u>BC McLeod</u>	<u>Verna Hills</u>
<u>Brian Logan</u>	<u>PSC</u>
<u>Karen Harrod</u>	<u>PSC</u>
<u>John H. Rumpf</u>	<u>Verna Hills</u>
<u>Berrie Curry</u>	<u>PSC Staff</u>
<u>Edward L. Yancy</u>	<u>Counsel for Complainants</u>
<u>M. L. Wane</u>	<u>complainants</u>
<u>Charles Norton</u>	<u>complainants</u>
<u>Stacy Coats</u>	<u>PSC</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Customer Account Information

Service to: 380-98000130-00 6
WARNER CHRIS
219 ROBYN DR

BILLING PERIOD

Jun.09,1999 TO Jul.12,1999
Date Billed 07-15-1999
Service for 33 Days
Next Reading on/about Aug. 10

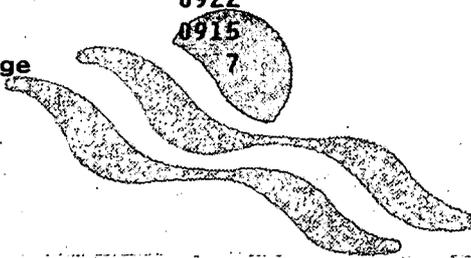
METER READING INFORMATION

Meter no. Meter size
036864997 5/8 inch
Present-Actual
Prior
1000 Gallons Usage

0922

0915

7



Billing Summary

AMOUNT OF LAST BILL
Payments, Jun.23,1999,Thank You
Prior Balance Jul.14,1999

CURRENT WATER CHARGES

Water Charge

OTHER CHARGES

Verna Hills Sewer Charge
Clark County School Tax
KRA Withdrawal Fee,Svc.Class 6
Total current charges
Your Prior Balance was

TOTAL AMOUNT DUE

78.01
78.01CR
.00
21.34
42.35
.65
.24
64.58
.00
\$64.58

MESSAGES TO YOU FROM KENTUCKY - AMERICAN

If you have questions or concerns, please contact our office. Office Hours 8:00 am to 4:30 pm M-F Phone 606-268-6300 or 1-800-678-6301, EMERGENCY - 606-269-2395.

MAKE EVERY DROP COUNT. Clean your driveway, steps or sidewalk with a broom, not a hose. A hose will use up to 150 gallons of water in just 10 minutes. When washing your car, turn the hose off except when rinsing. This will save you 100 gallons of water. Remember, don't water on windy days. Much of your water won't land where you want it to. Water in the early morning when it's cool and water has more staying power.

Have you checked out our Web Site? KAWC'S Web Site is full of good information including an interactive Kid's Page. Check it out - www.kawc.com.

Brochures on tips to conserve water are available in our lobby.





COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

August 26, 1999

To: All parties of record

RE: Case No. 99-205

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,
Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Verna Hills Neighborhood Association
P. O. Box 4377
Winchester, KY 40992 4377

Butch McCord
109 Robyn Drive
Winchester, KY 40391

Chris Warner
219 Robyn Drive
Winchester, KY 40391

Charles Norton
701 Princeton Drive
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Honorable Edward L. Yancy
Attorney at Law
P. O. Box 4308
Lexington, KY 40544 4308

Honorable John H. Rompf
Attorney for Verna Hills
White, McCann & Stewart
P.O. Box 578
Winchester, KY 40392 0578

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRIS WARNER AND
CHARLES NORTON

COMPLAINANTS

V.

VERNA HILLS NEIGHBORHOOD
ASSOCIATION, INC.

DEFENDANT

CASE NO. 99-205

O R D E R

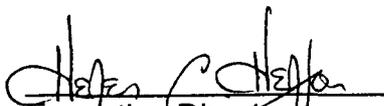
The Commission, on its own motion, hereby extends the due date for the briefs on the question of jurisdiction to no later than November 1, 1999.

BE IT SO ORDERED.

Done at Frankfort, Kentucky, this 26th day of August, 1999.

By the Commission

ATTEST:


Executive Director

LAW OFFICES OF
WHITE, McCANN & STEWART
CODELL BUILDING
125 SOUTH MAIN STREET
P.O. BOX 578
WINCHESTER, KENTUCKY 40392-0578

JANET WHITE PREWITT
JOHN H. ROMPF, JR.
BEVERLY ANN SHEA

EMILY P. HOLT

RECEIVED

AUG 24 1999

PUBLIC SERVICE
COMMISSION

BEVERLY WHITE
(1909-1996)
MARSHALL McCANN, JR.
(1927-1974)
JAMES B. STEWART
(1928-1992)
TELEPHONE (606) 744-2551
FAX (606) 744-2583

August 24, 1999

Ms. Helen Helton
Executive Director
Public Service Commission
770 Schenkel Lane
P.O. Box 615
Frankfort, KY 40602

Re: Warner and Norton vs. Verna Hills Neighborhood Association,
Inc., Case No. 99-205

Dear Ms. Helton:

Further to our discussion of "membership" at the PSC's informal conference held August 2, 1999, I enclose herewith a copy of an Application for Sewer Service wherein Plaintiff Warner agreed to membership in the association in writing. Further, the plaintiffs paid membership dues in the association until 1998.

Further, there was discussion of what inquiry had been made by the Board of the Neighborhood Association prior to implementation of the sewer charge for capital improvement. Enclosed is a copy of the letter received from Randall Palmer, PE, of Palmer Engineering, regarding his inspection of the plant.

Finally, I have recommended to the Board of Directors of the association that it specifically limit membership in the corporation to those persons who own lots in the Verna Hills Subdivision as shown in the plat of record in the Clark County Clerk's office and who receive sewer service from the treatment plant. Enclosed is a copy of such amendment adopted yesterday. I have also recommended that the corporation rescind the charge of \$1.50 per month per household which had been allocated into a separate account and used for neighborhood betterment activities. The board of directors has taken my recommendation and voted yesterday to rescind the charge retroactive to its inception date of January 1, 1999, and to make a refund of the amounts actually paid. In the future the board plans to implement a voluntary community association to engage in the betterment activities for the neighborhood entirely separate from its utility operation.

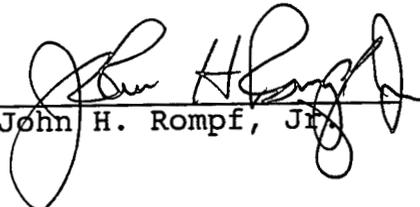
Ms. Helen Helton
August 24, 1999
Page 2

I ask that the Commission take these facts into consideration.

Very truly yours,

WHITE, McCANN & STEWART

BY


John H. Rompf, Jr.

JHR:jch
Enclosures

copy to: Hon. Edward Yancy
P.O. Box 4308
Lexington, KY 40544-4308

K:\JHR\verna-hills-helton-h-ltr

AMENDMENTS TO BY-LAWS OF
VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.

This Amendment adopted the 23rd day of August, 1999 is to update the original By-Laws of Verna Hills Neighborhood Association, Inc. originally adopted January 16, 1992 and amended February 17, 1994 and October 10, 1996. This adoption will cause the Verna Hills Neighborhood Association, Inc. By-Laws to include the original By-Laws with all changes adopted between the dates, including voted changes for August, 1999.

ARTICLE III -- QUALIFICATIONS OF OFFICERS

- a. Members must be in good standing in the Corporation.

ARTICLE X -- MEMBERSHIP

Members of the Corporation shall be any person or entity who owns any real property located in Verna Hills Subdivision as shown in Plat Book 4, Page 75, Clark County Clerks Office, and who receives sewer service from the Verna Hills sewer plant. Membership rights may be assigned by the owner to a person occupying a residence in said subdivision in writing delivered to the Secretary of the Corporation.

ARTICLE XV -- SEWAGE TREATMENT SYSTEM

- c. This paragraph is hereby deleted from the By-Laws.
e. The Board may discontinue or refuse sewer service to a member for failure to pay for sewer service or failure to comply with the duly adopted rules and regulations of the Board pertaining to the sewer plant.

Joni K. Breeding
SECRETARY

Amendments adopted by the Board of Directors of Verna Hills Neighborhood Association, Inc. this 23rd day of August, 1999.

Charles McIntosh
Charles McIntosh, President

Jerry Cecil, Board of Directors

Todd Peyton
Todd Peyton, Vice-President

Fred Brown, Board of Directors

Joni Breeding
Joni Breeding, Secretary

Larry Neavill
Larry Neavill, Board of Directors

Rick Bahr, Treasurer

Dan Elam, Board of Directors

Randy Johnson
Randy Johnson, Board of Directors

John Bodnar
John Bodnar, Board of Directors



■ WINCHESTER ■ NASHVILLE ■ LOUISVILLE

April 17, 1997

Mr. Jim Greene
105 Robyn Drive
Winchester, KY 40391

RE: Verna Hills Sewage Treatment Plant

Dear Mr. Greene:

On April 7 and 8, 1997, we conducted a visual inspection of the above referenced sewage treatment plant. We have also reviewed a video tape of the sewage treatment plant made on April 14, 1997. The field review and video tape show several areas of heavy corrosion and several leaks in the wall between the holding tank and digester tank. We were unable to obtain the original construction plans for the sewage treatment plant. The plant was constructed approximately 25 years ago. It is our understanding that the community plans to replace the current sewage treatment plant in 10 years.

A heavy amount of corrosion was noted on exterior of the transport trough. According to the plant manager, Mr. Van Bugg, the interior of the transport trough does not indicate any major corrosion. We recommend the excess rust be removed from the transport trough. The trough should then be sand blasted clean. A coating should then be applied to reduce further corrosion.

During the visual inspection, the wall between the digester and holding tank showed heavy corrosion above the waterline. The video tape showed two leaks in the wall. A small leak is located above the waterline near the end of the wall on the lagoon side. The second leak is located where the transport trough enters the digester tank. Mr. Bugg indicated that this leak has grown from a small pin size leak three years ago to approximately 1 inch in diameter today. These leaks do not pose a large threat to the structural integrity of this wall. The visual inspection did not allow us to determine the amount of corrosion that may have occurred in the lower portion of the wall. Based on the age of wall and the condition of the upper portion of the wall, we recommend that either the wall be further inspected or some type of liner be installed. If the wall is to be further inspected, the digester and holding tank should be drained. This will allow an in-depth inspection of the wall. The inspection can determine if a liner is necessary or if spot repair can extend the life of the wall. If an in-depth inspection is not viable, we recommend some type of liner be installed.

If you have any questions or need additional information, please do not hesitate to call on us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Randall S. Palmer'.

Randall S. Palmer, PE
Structure Project Manager

Verna Hills Neighborhood Association

P.O. Box 4377
Winchester, KY 40392-4377

August 1, 1993

APPLICATION FOR SEWER SERVICE

Name of Resident Chris Warner
Address 219 Robyn Dr.
Telephone Number 744-7283

Home Owner (If different from above) _____
Address _____
Telephone _____

Agreement For Service

I hereby make application and authorize the Verna Hills Neighborhood Association, Inc. to provide sewer services requested at the above address. I agree to make payment of all amounts due on or before due dates for services furnished to any address where I either have an interest in ownership of the property, directly or indirectly, or have requested service. I understand that my failure to do so will be just cause for discontinuance of sewer service. I further agree that I will be responsible and liable for all charges against this account until I provide in writing a notice of discontinuance of sewer service. It is understood that the Board of Directors of the Verna Hills Neighborhood Association, Inc. has the authority to set rates and establish policy and/or rules of service. It is further understood that if service is terminated due to nonpayment of amounts due the homeowner will be responsible for all termination and reconnection fees. Whereas, the Verna Hills Neighborhood Association, Inc. is a non profit corporation it will be required that all sewer subscribers be a member in good standing of the Association. It is also agreed that a one time fee of \$300.00 per household will be paid as follows: All or at least \$100.00 due by August 10, 1993 and any balance due within 90 days. Failure to pay fee is reason for discontinuance of service. All monthly payments not received by 10th of the month are subject to late charge. I fully understand and accept the above conditions:

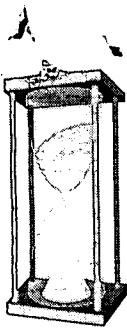
Chris Warner
Signature

8-7-93
Date

Current Monthly Rate (Members)
One Time Household Charge
Association Yearly Membership

\$20.40 ✓
~~\$300.00~~ ✓ \$100.00
\$20.00
chk # 1894
8/7/93
Hej

Please complete application and return with August 1993 payment and payment for one time household charge no later than August 10, 1993. If you are not a member payment of the membership dues are due by August 10th.



Offices Of
EDWARD L. YANCY
Counselor of Law

P.O. Box 4308
Lexington, KY 40544-4308
Tel: (606)252-7802
Fax: (606)255-1882

Sed fugit interea, fugit irreparabile tempus.
But meanwhile it is flying, irretrievable time is flying.
Virgil

One Executive Blvd., Suite 219
Paducah, KY 42001
Tel: (270)441-7375
Fax: (270)444-9932

August 5, 1999

Helen Helton
Executive Director
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, Kentucky 40602

RECEIVED

AUG 09 1999

PUBLIC SERVICE
COMMISSION

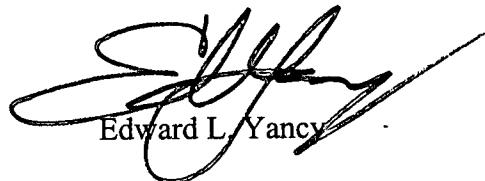
RE: Warner/Norton v. Verna Hills Neighborhood Association, Inc.
Case No. 99-205

Dear Ms. Helton,

In the course of the conference at the PSC's office on Tuesday, August 2, 1999, Ms. Dougherty was referred to a letter by Mr. Warner during the discussion of "membership" and its intended definition, but the letter was not in the PSC files. Enclosed are ten copies of the letter per Ms. Dougherty's instructions. Please take this information into consideration as part of the facts which are before the PSC in this case.

Thank you.
I remain,

Yours very truly,



Edward L. Yancy

ELY:mmi
cc: Hon. John H. Rompf, Jr.

WINCHESTER, KY. 40392-4377

05-01-98

Mr. & Mrs. Warner
219 Robyn Drive
Winchester, Ky. 40391

Mr. & Mrs. Warner,

As of ~~4-30-98~~ my records indicate we have not received your 1998 Verna Hills Neighborhood Assoc. dues for the amount of \$20.

As stated in previous letter, each household must be a dues paying member of the Verna Hills Neighborhood Assoc. in order to keep the sewage treatment plant a privately owned plant and not subject to the rules and regulations of the Public Service Commission.

Please make your check payable to Verna Hills Neighborhood Association and mark as "Membership Dues". Mail the check to the above address, Attn: Treasurer.

This is your third and final notice for the 1998 Membership Dues. In fairness to all homeowners if payment is not received by 5-30-98, Verna Hills Neighborhood Assoc. will file with Small Claims Court to collect the 1998 Dues in the amount of \$20. The cost of filing is \$36 which is due on the day the file is claimed. Whoever loses the case is liable for the \$36. If you choose to pay the Membership Dues prior to court date but after Verna Hills Neighborhood Association has filed with Small Claims Court, you will be responsible for the \$36 filing fee.

Thank you in advance for your cooperation.

Rebecca A. Frye
Rebecca A. Frye
Treasurer

RECEIVED

AUG 09 1999

PUBLIC SERVICE COMMISSION



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

July 22, 1999

To: All parties of record

RE: Case No. 99-205

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Verna Hills Neighborhood Association
P. O. Box 4377
Winchester, KY 40992 4377

Butch McCord
109 Robyn Drive
Winchester, KY 40391

Chris Warner
219 Robyn Drive
Winchester, KY 40391

Charles Norton
701 Princeton Drive
Winchester, KY 40391

Honorable Edward L. Yancy
Attorney at Law
P. O. Box 4308
Lexington, KY 40544 4308

Honorable John H. Rompf
Attorney for Verna Hills
White, McCann & Stewart
P.O. Box 578
Winchester, KY 40392 0578

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRIS WARNER AND)	
CHARLES NORTON)	
COMPLAINANTS)	
V.)	CASE NO. 99-205
)	
VERNA HILLS NEIGHBORHOOD)	
ASSOCIATION, INC.)	
DEFENDANT)	

O R D E R

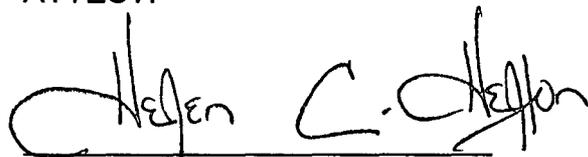
On July 14, 1999, the Commission scheduled an informal conference for all parties for August 2, 1999. Because of its scheduling conflict, Verna Hills Neighborhood Association, Inc. filed a motion on July 19, 1999 to reschedule the informal conference. Having considered the motion, the Commission finds that the informal conference in this matter should be rescheduled.

IT IS THEREFORE ORDERED that an informal conference is scheduled for all parties on August 3, 1999, at 1:30 p.m., Eastern Daylight Time, in Conference Room 2 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 22nd day of July, 1999.

By the Commission

ATTEST:


Executive Director

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
JUL 19 1999
PUBLIC SERVICE
COMMISSION

In the Matter of:

CHRIS WARNER and
CHARLES NORTON

COMPLAINANTS

VS.

MOTION TO CONTINUE
INFORMAL CONFERENCE

NO. 99-205

VERNA HILLS NEIGHBORHOOD
ASSOCIATION, INC.

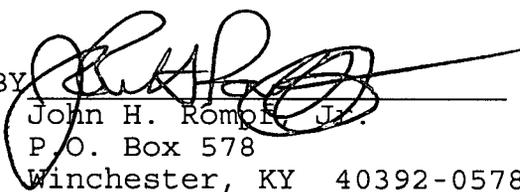
DEFENDANT

* * * * *

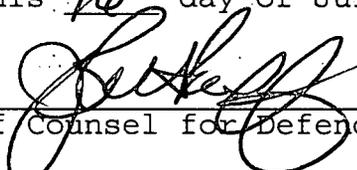
Comes the defendant, Verna Hills Neighborhood Association, Inc. ("Association"), by counsel, and moves the Commission to reschedule the informal conference now scheduled for August 2, 1999 at 10:00 a.m. Counsel for the Association is scheduled to be out of town on vacation until August 3, 1999. He will be available for the conference on August 3 and August 4 in the afternoon, August 6 in the morning, and August 10 all day.

Respectfully Submitted,

WHITE, McCANN & STEWART

BY 
John H. Romph, Jr.
P.O. Box 578
Winchester, KY 40392-0578
606-744-2551
ATTORNEYS FOR DEFENDANT

I certify a true copy of the foregoing has been served upon Hon. Edward L. Yancy, P.O. Box 4308, Lexington, KY 40544-4308; this ¹⁶ day of July, 1999.



Of Counsel for Defendant

42

99-205

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and 2 or additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Verna Hills Neighborhood
ASSOC.

4a. Article Number
2 319 084 622

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery
JUN 10 1999

5. Received By: (Print Name)

8. Addressee's Address (if requested and fee is paid)

6. Signature (Addressee or Agent)
* Richard [Signature]

Thank you for using Return Receipt Service.



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

July 14, 1999

To: All parties of record

RE: Case No. 99-205

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

Stephanie Bell

Stephanie Bell
Secretary of the Commission

SB/hv
Enclosure

Verna Hills Neighborhood Association
P. O. Box 4377
Winchester, KY 40992 4377

Butch McCord
109 Robyn Drive
Winchester, KY 40391

Chris Warner
219 Robyn Drive
Winchester, KY 40391

Charles Norton
701 Princeton Drive
Winchester, KY 40391

Honorable Edward L. Yancy
Attorney at Law
P. O. Box 4308
Lexington, KY 40544 4308

Honorable John H. Rompf
Attorney for Verna Hills
White, McCann & Stewart
P.O. Box 578
Winchester, KY 40392 0578

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRIS WARNER AND)	
CHARLES NORTON)	
)	
COMPLAINANTS)	
)	
V.)	CASE NO. 99-205
)	
VERNA HILLS NEIGHBORHOOD)	
ASSOCIATION, INC.)	
)	
DEFENDANT)	

O R D E R

On May 13, 1999, Chris Warner and Charles Norton filed a complaint against the Verna Hills Neighborhood Association, Inc. ("Association"), alleging the Association improperly increased sanitary sewer charges. On June 9, 1999, the Association filed its reply, contending that the Commission lacks jurisdiction over the Association.

The Commission believes there may be factual issues that an informal conference may clarify. Therefore, on its own motion, the Commission HEREBY ORDERS that:

1. An informal conference is scheduled for all parties on August 2, 1999, at 10:00 a.m., Eastern Daylight Time, in Conference Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.
2. Briefs on the question of jurisdiction shall be submitted to the Commission on or before September 1, 1999.

Done at Frankfort, Kentucky, this 14th day of July, 1999.

By the Commission

ATTEST:


Executive Director



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602
www.psc.state.ky.us
(502) 564-3940
Fax (502) 564-3460

Ronald B. McCloud, Secretary
Public Protection and
Regulation Cabinet

Helen Helton
Executive Director
Public Service Commission

Paul E. Patton
Governor

July 14, 1999

To: All Parties of Record

Re: Case No. 99-232
Filing Deficiencies

The Commission staff has reviewed your application in the above case and finds that it meets the minimum filing requirements. Enclosed please find a stamped-filed copy of the first page of your filing. This case has been docketed and will be processed as expeditiously as possible.

The following item is not required to be filed with an application for transfer but ideally must be filed in order to expedite the processing of the application:

Signed Purchase/Sale Agreement, or at least some kind of reduction of the terms of the transfer to writing, e.g., a letter of understanding.

Please provide the Commission with the above information within 15 days of the date of this letter. If you need further assistance, please contact James R. Goff of my staff at (502) 564-3940, ext. 261.

Sincerely,
Stephanie Bell

Stephanie Bell
Secretary of the Commission

/sh



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

Jerome A. Kanney
276 Thompson Road
P. O. Box 3385
Pikeville, KY. 41502 3385

Mary Leslie
P. O. Box 371
Prestonsburg, KY. 41653

Dennis L. Rohrer
276 Thompson Road
P. O. Box 3385
Pikeville, KY. 41502 3385

Susan A. Branham
P. O. Box 785
Prestonsburg, KY. 41653

Jerome A. Kanney & Dennis L. Rohrer

276 Thompson Road
P.O. Box 3385
Pikeville, KY 41502-3385
Phone (606) 437-6147
Fax (606) 432-5103

RECEIVED
JUN 09 1999
PUBLIC SERVICE
COMMISSION

June 7, 1999

FILED
JUN 09 1999
PUBLIC SERVICE
COMMISSION

Don Mills, Executive Director
Public Service Commission
730 Schenkel Lane
P.O. Box 615
Frankfort, KY 40602

Dear Mr. Mills:

CASE 99-232

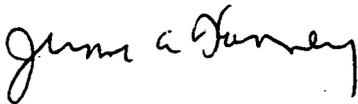
Jerome A. Kanney and Dennis L. Rohrer, whose business addresses are 276 Thompson Road, P.O. Box 3385, Pikeville, Kentucky 41502-3385, plan to purchase Dema Gas Company, Inc. from Mary Leslie and Susan A. Crum.

Jerome A. Kanney and Dennis L. Rohrer also own Cow Creek Gas, Inc., and are familiar with Public Service Commission's regulations. Dema Gas Company, Inc. services approximately 23 customers in Knott County, Kentucky. Dema Gas Company, Inc. has made arrangements with John Allen, Jr. to handle all billing and collections.

Please find enclosed an original application along with 10 requested copies of the application and 2 additional copies for the other individuals listed on the application. Also enclosed is a certified copy of the Articles of Incorporation for Dema Gas Company.

Thank you for your time and attention to this matter.

Very truly yours,



JEROME A. KANNEY

JAK/tan

Enclosures: Application
12 copies
Articles of Incorporation

RECEIVED

JUN 09 1999

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRIS WARNER and
CHARLES NORTON

COMPLAINANTS

VS.

ANSWER TO COMPLAINT

NO. 99-205

VERNA HILLS NEIGHBORHOOD
ASSOCIATION, INC.

DEFENDANT

* * * * *

Comes the defendant, by and through counsel, for its answer to the Complaint herein and states as follows:

1. The defendant does not have sufficient information upon which to form a belief as to the allegations contained in paragraphs 2, 3, 5, both paragraphs 15, 16, 18, 22, 23, 24, and 25 of the Complaint, and therefore denies same.

2. The defendant admits paragraphs 1, 4, 6, 7, 8, 9, 10, 13, and 26 of the Complaint.

3. The defendant denies paragraphs 11, 12, both paragraphs 14, 19, 20, 21, 27, 28, 29, 30, and 31 of the Complaint, and further denies each and every other allegation not specifically admitted herein.

4. The Verna Hills Neighborhood Association, Inc., (hereinafter "VHNA") is a private, non-profit corporation operating under the laws of the Commonwealth of Kentucky; a true copy of its Articles of Incorporation is attached hereto marked Exhibit A.

5. The Bylaws adopted by VHNA are attached hereto marked Exhibit B.

6. The Bylaws of VHNA specifically provide that membership is limited to "any individual or family residing within the geographic area of Verna Hills Neighborhood Corporation" and further provides that "Sewage Service shall be provided to each member upon the following terms and conditions

. . . .

f. Service shall be provided only to members of the Corporation, not to the general public, said members being property owners in Verna Hills Subdivision."

7. By Order of the Public Service Commission dated December 16, 1993 in Case No. 93-315--In Re the Matter of the "Application of Verna Hills Association, Inc., for an Order Authorizing Verna Hills, Ltd. to Transfer Its Assets to Applicant and for the Determination of Jurisdictional Status", the Commission determined that VHNA was not a utility subject to the jurisdiction of the Commission.

8. There has been no change in the VHNA sewer system or in the geographic area served by that system since December 13, 1993, and VHNA does not offer service or serve any customer who does not live within the specific boundary of Verna Hills Subdivision.

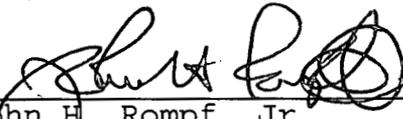
9. VHNA does not treat sewage for the "public" and as such is not subject to the jurisdiction of the Public Service Commission pursuant to KRS 278.010.

WHEREFORE, Verna Hills Neighborhood Association, Inc., demands Judgment that the Complaint against it be dismissed with

prejudice, at the cost of the complainants, that the Commission determine that Verna Hills Neighborhood Association, Inc. is not subject to the jurisdiction of the Public Service Commission, or alternatively, that the Commission determine that its charges, fees, and assessments for the provision of sanitary sewer service to the line boundary of Verna Hills Subdivision in Winchester, Clark County, Kentucky, are fair and reasonable.

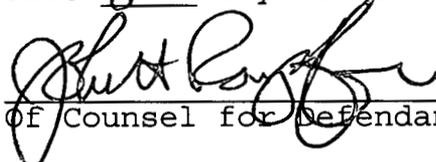
WHITE, McCANN & STEWART

BY


John H. Rompf, Jr.
P.O. Box 578
Winchester, KY 40392-0578
606-744-2551

ATTORNEYS FOR DEFENDANT

I certify a true copy of the foregoing has been served upon Hon. Edward L. Yancy, P.O. Box 4308, Lexington, KY 40544-4308; this 24 day of June, 1999.


Of Counsel for Defendant

K:\JHR\verna-hills-assn-complaint-ans

BY-LAWS

OF

VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.

ARTICLE I *OFFICERS

There shall be elected by the membership, a President, Vice-President, and a Secretary/Treasurer. All such officers shall be voting members of the Board of Directors. The President shall be the Chief Executive Officer of the Corporation, and shall preside at all meetings of the Board of Directors and at all membership meetings. In the event of the absence of, or the incapacity of the President, the Vice-President shall act as the President. The Secretary/Treasurer shall keep accurate minutes of all meetings of the Board of Directors and of the membership and shall have charge of all correspondence of the Corporation, and shall have supervision of all financial records of the Corporation. Officers shall be elected for a period of one year, by a vote of the entire membership, except that during the first two years of the Corporation, officers may serve for a period of two years. Following the expiration of the first two-year term and all subsequent one-year terms, officers may not serve a successive term, but they may serve non-sequential terms.

ARTICLE II *BOARD OF DIRECTORS

The initial Board of Directors shall consist of eight (8) members and the number of Directors may be expanded by a 2/3 majority vote of the Board of Directors. Not less than 1/3 of the members of the Board of Directors shall be elected each year. At the formation of the Board, 1/3 shall be elected for one-year terms, 1/3 for two-year terms and 1/3 for three-year terms. In the event of a resignation or removal of any member of the Board, a new member shall be appointed to replace him/her for the unexpired term only. Replacement members shall be elected to the Board by a 2/3 majority vote of the members of the Board. Officers of the Corporation shall have full standing rights and privileges on the Board of Directors. Any Board member who fails to attend three consecutive board meetings without excuse may have his/her seat declared vacant and said vacancy shall be filled as outlined above.

ARTICLE III *QUALIFICATIONS OF OFFICERS

The following qualifications will be required for the Officers and Board of Directors:

- a. Member must be in good standing in the Corporation with dues paid.
- b. Member must be at least 21 years old.
- c. Member must have a minimum residency of 6 months in Verna Hills.

* - See Amendments of 2/94 for changes in Article I and II and III

ARTICLE IV

REGULAR MEETINGS

Regular meetings of the Members of the Corporation shall be held not less than once per calendar year and notice of the time and place of said meetings shall be mailed or delivered to all members of the Corporation by direction of the Secretary. At one regular meeting each year, there shall be an election of officers and directors of the Corporation. The names and addresses and any biographical data, if available, of any nominees for officers's or director's positions shall be included in the notice of the meeting, including a statement that additional nominations may be made from the floor by any member during the meeting.

ARTICLE V

SPECIAL MEETINGS

Irregular or special meetings of the members of the Corporation may be called by a majority vote of the Board of Directors of the Corporation, or by the President upon the written request of ten (10) percent of the membership. A call of a special meeting shall set forth in writing the purpose or purposes of said meeting, and no other business shall be transacted at any special meeting without a 75% majority consent of those members present. A notice of any special meeting shall be mailed or delivered to all members of the Corporation under the direction of the Secretary, said notice to contain the purpose or purposes of said meeting. The place and time of the special meeting shall be designated by the Board of Directors, if the Board calls the meeting, or by the President of the Corporation, if the President calls the meeting, provided, however, that said meeting shall take place in Clark County, Kentucky.

ARTICLE VI

DIRECTORS MEETING

The Board of Directors shall meet not less than quarterly at a place and hour designated by the President. The Directors shall also meet whenever called together by the President on due notice to each Director. The President shall call all meetings of the Board of Directors, and if for any reason he/she shall fail to call a meeting when requested to do so by three (3) or more Directors, or shall fail to call a regular meeting of the Board of Directors, the meeting may be called by any three (3) Directors in the same manner that the President may call a meeting. Notice of any special meeting of the Board of Directors shall be given in writing or by telephone at least seven (7) days in advance of such meeting, and if mailed, shall be mailed postage prepaid, to each Director at his address as it appears on the books of the Corporation, or personally delivered to him/her. Notice of a meeting of the Directors may be waived by all the Directors. The Board of Directors may adopt such rules and regulations for the conduct of the business of the Corporation as are not inconsistent with the laws of the Commonwealth of Kentucky, the Articles of Incorporation, or the By-laws. Rules for calling meetings may be waived in the event of an emergency.

ARTICLE VII

NOTICES OF MEETINGS

Any notice of any meeting as required under these By-laws, shall be personally delivered or mailed to every member of the Corporation in good standing at the time of the notice, at least seven (7) days in advance of the date of the meeting. If mailed, the notice shall bear proper postage and shall be addressed to the member at his/her address as it appears on the books of the Corporation. Notice of any meeting may be waived by the unanimous consent of the members of the Corporation.

ARTICLE VIII

QUORUMS

Twenty (20) percent of the membership shall constitute a quorum for any meeting of the Corporation, and a majority of the Directors shall constitute a quorum for a Board of Directors meeting, subject only to the provisions in the Association's Articles of Incorporation and the laws of the Commonwealth of Kentucky.

ARTICLE IX

VOTING

A majority vote of the members present, in person, shall determine all questions at any meeting, except in those instances where the manner of procedure set out in the By-laws, the Articles of Incorporation of this Corporation, or the laws of the Commonwealth of Kentucky are to the contrary. Any member in good standing may vote on any and all matters at a regular or special meeting of the Corporation, provided, however, that a family membership shall possess only one (1) vote for that family. Under no circumstances, shall any individual, family, or entity have more than one (1) vote.

ARTICLE X

MEMBERSHIP

Membership in the Corporation shall be extended to any individual person or family residing within the geographical area of the Verna Hills Neighborhood Corporation, except that they shall be the owner of record of the property on which they reside. Membership rights may be assigned from an owner to a renter, in writing. ~~Membership shall commence upon payment of annual dues. Dues cover the period from January 1st to December 31st each year.~~ Membership may be extended to any interested person or family, if so allowed by a 3/4 majority vote of the Board of Directors, upon payment of annual dues, and may be extended to any group, corporation or association, if so allowed by a 3/4 majority vote of the Board of Directors, upon payment of annual dues. The payment of dues affords membership for the calendar year in which they are paid. ~~The Board of Directors shall establish the amount of the dues, except that, once established, they may only be increased by a 2/3 majority vote of the entire membership. The amount of the dues may be decreased by the Board of Directors.~~ Dues of first-time members may be prorated for the amount of time remaining in the calendar year during which they join. Owners of building lots within the boundaries of the Verna Hills Neighborhood

Corporation shall not be eligible for membership unless they shall provide an affidavit that it is their intent to construct a residence on said lot for their own dwelling.

ARTICLE XI

EXPENDITURE OF REVENUES

Expenditures which are duly authorized by the Board of Directors or membership shall be made under the signature of the Secretary, Treasurer and the President or Vice President.

ARTICLE XII

BY-LAWS

The by-laws may be changed, expanded or altered by a majority vote of the members of the Board of Directors.

ARTICLE XIII

BOUNDARIES

The boundaries of the Verna Hills Neighborhood Corporation shall be all those areas designated by recorded plat at the date of Incorporation as being a part or unit of Verna Hills Subdivision and all those areas which may become a part of the subdivision and so designated on recorded plats.

ARTICLE XIV

RULES OF ORDER

Parliamentary procedure at all meetings of the members, of the Board of Directors, of any committee that might be appointed from time to time, shall be governed by the most recent edition of Robert's Rules of Order, except to the extent such procedure is otherwise determined by law or by the Association's Articles of Incorporation or By-laws.

*



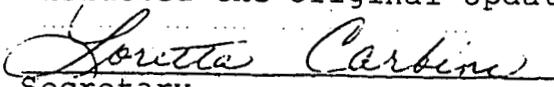
SECRETARY, TREASURER

Adopted by the Board of Directors of Verna Hills Neighborhood Association, Inc., this 16 th day of January, 1992.

*-See Amendments of 2/94 for addition of Article XV.

**This copy of original By-Laws to be considered the Original Updated By-Laws as of February, 1994.

4



Secretary

AMENDMENTS TO BY-LAWS OF
VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.

This Amendment adopted the 17th day of February, 1994, to update the original By-Laws of Verna Hills Neighborhood Association, Inc., originally adopted January 16, 1992. This adoption will cause the Verna Hills Neighborhood Association, Inc. By-Laws to include the original By-Laws, with all changes adopted between these dates, and to expand the By-Laws to include the By-Laws pertaining to the Sewage Treatment System. As of this date, these documents will become the current By-Laws of the Verna Hills Neighborhood Association, Inc.

ARTICLE I - OFFICERS

9/16/93 Breakdown of the position of Secretary/Treasurer into two positions was passed unanimously by current Board of Directors of Verna Hills Neighborhood Association, Inc. Article amended to read as follows:

There shall be elected by the membership, a President; Vice-President; a Secretary; and a Treasurer. All such officers shall be voting members of the Board of Directors. The President shall be the Chief Executive Officer of the Corporation, and shall preside at all meetings of the Board of Directors and at all membership meetings. In the event of the absence of/or the incapacity of the President, the Vice-President shall act as the President. The Secretary shall keep accurate minutes of all meetings of the Board of Directors and of the membership meetings and shall have charge of all correspondence of the Corporation. The Treasurer shall have supervision of all financial records of the Corporation. Officers shall be elected for a period of one year, by a vote of the entire membership, except that during the first two years of the Corporation, officers may serve for a period of two years. Following the expiration of the first two-year term and all subsequent one-year terms, officers may not serve a successive term, but they may serve non-sequential terms.

ARTICLE II - BOARD OF DIRECTORS

11/10/92 - All new Board members elected after the first year will be elected for 3 year terms.
11/10/92 - Board membership to extend 90 days past expiration of term in case of emergency.
The extension shall reduce the next term by time served.

ARTICLE III d. All officers shall be property owners in Verna Hills.

ARTICLE XV - SEWAGE TREATMENT SYSTEM

Below is the By-Laws, reflecting changes as approved 8/19/93.
The Sewage Treatment System By-Laws are hereby incorporated into the By-Laws of Verna Hills Neighborhood Association, Inc., as Article XV.

Sewage service shall be provided to each member of the corporation upon the following terms and conditions.

a. The corporation hereby adopts, ratifies and makes as its own all rates, rules, classifications and regulations of Verna Hills Neighborhood Association, Inc., on file with the Public Service Commission effective at the time of transfer of assets to the corporation.

b. A member desiring sewer service shall pay the rates and shall comply with all the rules and regulations hereby adopted and ratified.

c. Further, a member shall pay to the Treasurer of the corporation an initial application fee of \$20.00

d. The Board shall have the power and authority to modify from time to time all rates, rules, classifications and regulations pertaining to the sewer system.

e. ~~The Board may discontinue or refuse sewage service to a member for failure to pay required fees or for failure to comply with the duly adopted rules and regulations of the Board pertaining to the sewer system.~~

f. ~~Service shall be provided only to members of the corporation, not to the general public, said members being property owners in Verna Hills Subdivision.~~

g. Assessments charged by the corporation for sewage treatment service shall be equal to the cost of providing such service. The Board shall adjust the rates from time to time to cover that cost without making a profit from the facility's operation. The Board may not expand the capacity of the sewage treatment facility beyond the capacity needed to meet the needs of the members of the corporation.

Loretta Carbine
SECRETARY

Amendments adopted by the Board of Directors of Verna Hills Neighborhood Association, Inc., this 17th day of February, 1994.

Howard Breiner
Howard Breiner, President

Kenny Cropper
Kenny Cropper, Vice President

Loretta Carbine
Loretta Carbine, Secretary

Backy Frye
Backy Frye, Treasurer

John Griffith
John Griffith, Board of Directors

Bonnie McCord
Bonnie McCord, Board of Directors

Randy Breeding
Randy Breeding, Board of Directors

Randy Johnson
Randy Johnson, Board of Directors

Jeff Deaton
Jeff Deaton, Board of Directors

Shelby Gitt
Shelby Gitt, Board of Directors

George Frazen
George Frazen, Board of Directors

Van Bugg
Van Bugg, Board of Directors

AMENDMENTS TO BY-LAWS OF
VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.

This Amendment adopted the 10th day of October, 1996, to update the original By-Laws of Verna Hills Neighborhood Association, Inc., originally adopted January 16, 1992; and amended February 17, 1994. This adoption will cause the Verna Hills Neighborhood Association, Inc. By-Laws to include the original By-Laws, with all changes adopted between these dates, including voted changes of October, 1994.

ARTICLE I - OFFICERS

Officers - President, Vice-President, Secretary, and Treasurer, may serve successive terms, when so voted by the general membership.

ARTICLE II - BOARD OF DIRECTORS

The Board of Directors shall consist of 10 members - President, Vice President, Secretary, Treasurer, and 6 Board members. It is reiterated herein, for clarity, that the six (6) Board Member positions will be for three (3) year terms, and the Officer positions will be for one (1) year terms.

ARTICLE III - QUALIFICATIONS OF OFFICERS

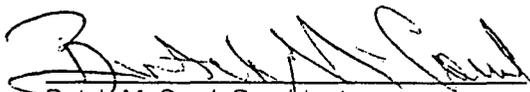
This Article stated fully for clarity, and to include changes voted by the Board of Directors. The following qualifications will be required for the Officers and Board of Directors:

- a. Member must be in good standing in the Corporation, with membership dues paid.
- b. Member must be at least 21 years old.
- c. Member must have a minimum residency of 6 months in Verna Hills Subdivision.
- d. All officers shall be property owners in Verna Hills.
- e. All Members must have an Application for Sewer Service as provided by the VHNA properly signed and on file with the Verna Hills Neighborhood Association.

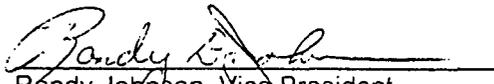
ARTICLE XV - SEWAGE TREATMENT SYSTEM

g. Assessments charged by the Corporation for sewage treatment service shall be equal to the cost of providing service for the long term. The Board shall adjust the rates from time to time to cover that cost, and provide for long term service, hopefully without the necessity for special assessments for repair or replacement of the Sewer Treatment Plant. The Board will be responsible for proper administration of monies gathered, account arrearages, etc. The Board may not expand the capacity of the sewage treatment facility beyond the capacity needed to meet the needs of the members of the corporation.

Amendments adopted by the Board of Directors of Verna Hills Neighborhood Association, Inc. this 10th day of October, 1996.


Butch McCord, President

Randy Breeding, Board of Directors


Randy Johnson, Vice President

Sharon Webster, Board of Directors

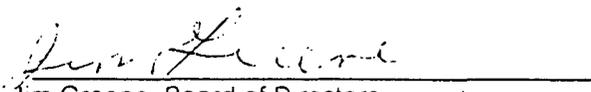

Loretta Carbine, Secretary

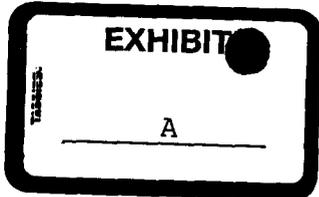

Larry Neavill, Board of Directors


Judy McIntosh, Treasurer

Kathy Keller, Board of Directors

Shelby Gill, Board of Directors


Jim Greene, Board of Directors



RECEIVED & FILED
Oct 12 1970
8:00
[Signature]

ARTICLES OF INCORPORATION
OF
VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.

We, the undersigned, WILLIAM P. GREEN and BUTCH McCORD, citizens of the United States of America, execute these Articles of Incorporation for the purpose of forming a non-profit, non-stock corporation, under and pursuant to the laws of the Commonwealth of Kentucky, and more particularly Chapter 273 of the Kentucky Revised Statutes, in accordance with the following provisions:

ARTICLE I

The name of the corporation shall be VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.

ARTICLE II

The duration of the corporation shall be perpetual.

ARTICLE III

The registered office and principal place of business of the corporation in the Commonwealth of Kentucky shall be 109 Robyn Drive, Winchester, Kentucky; and the initial registered agent at such address is Butch McCord.

ARTICLE IV

The purposes of the corporation shall be as follows:

1. To promote the health, safety and welfare of the residents within Verna Hills Subdivision and any additions thereto as may be brought within the jurisdiction of this corporation;
2. To fix, levy, collect and enforce payment by any lawful means, of all charges and assessments pursuant to the corporation's bylaws; and to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all licenses, taxes, or governmental charges levied or imposed against the

property of the corporation;

3. To hold real and personal property, to maintain and improve same, to borrow for the acquisition, improvement or maintenance of the real and personal property of the corporation, and to mortgage and pledge as security the assets of the corporation;

4. To enforce any and all covenants, restrictions and agreements applicable to the property of the corporation and any and all other covenants, restrictions and agreements applicable to any section or unit within Verna Hills Subdivision;

5. To acquire and dispose of property subject to any limitations imposed upon the corporation;

6. To do and perform any act permitted by law which would promote the common benefit and enjoyment of Verna Hills Subdivision; and

7. To have and exercise any and all powers, rights and privileges which a corporation organized under Chapter 273, of the Kentucky Revised Statutes may now or hereafter have or exercise.

ARTICLE V

~~The corporation shall be irrevocably dedicated to and operated exclusively for non-profit purposes. The corporation shall have no power to issue certificates of stock or declare dividends; and shall be composed of members rather than shareholders. No part of the net earnings of the corporation shall inure to the benefit or be distributable to its members, directors, officers or other private person, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article IV hereof.~~

ARTICLE VI

Membership in the corporation may be given and terminated in a manner provided in the Bylaws of the corporation.

ARTICLE VII

The names and addresses of the incorporators are:

<u>INCORPORATORS</u>	<u>MAILING ADDRESS</u>
Butch McCord	109 Robyn Drive Winchester, KY 40391
William Green	203 Robyn Drive Winchester, KY 40391

ARTICLE VIII

The initial Board of Directors shall consist of twelve (12) directors. The number of directors set out herein may be changed by amendment to the Bylaws; but in any event, at any one time there shall be no less than three (3) directors.

The names and addresses of the initial Board of Directors are:

<u>DIRECTORS</u>	<u>MAILING ADDRESS</u>
Butch McCord	109 Robyn Drive Winchester, KY 40391
Bob Roglitz	704 Marilyn Street Winchester, KY 40391
Howard Breiner	502 Waveline Drive Winchester, KY 40391
Beulah Greene	105 Robyn Drive Winchester, KY 40391
Bennie McCord	800 Larry Court Winchester, KY 40391
Rhonda Sewell	12 Robyn Drive Winchester, KY 40391
Bob Wallin	654 Laura Drive Winchester, KY 40391
William Green	203 Robyn Drive Winchester, KY 40391
Jeff Deaton	221 Robyn Drive Winchester, KY 40391
Charles Norton	701 Marilyn Street Winchester, KY 40391
Randy Breeding	225 Robyn Drive Winchester, KY 40391

ARTICLE IX

The initial Bylaws of the corporation shall be adopted and may be amended or repealed by the Board of Directors.

Thereafter, the corporation shall be governed by the Bylaws.

ARTICLE X

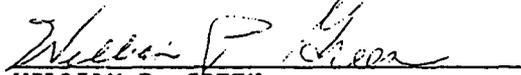
The private, personal or real property of the incorporators, directors, officers and members, as well as their successors, of the corporation shall not be subject to or liable for any debts of this corporation or the payment thereof.

ARTICLE XI

Amendments to these Articles shall be made pursuant to the provisions of KRS 273.263.

IN TESTIMONY WHEREOF, witness the signatures of the incorporators of this corporation on this 16th day of December, 1991.

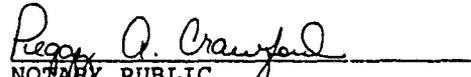

BUTCH McCORD


WILLIAM P. GREEN

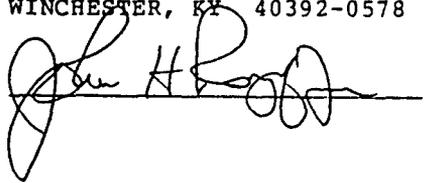
STATE OF KENTUCKY)
) SCT.
COUNTY OF CLARK)

I, Peggy A. Crawford, a Notary Public in and for the State of Kentucky at Large, do certify that this day BUTCH McCORD and WILLIAM P. GREEN produced the foregoing Articles of Incorporation before me in this County and subscribed their names and were sworn thereto.

WITNESS my hand and seal of office this 16th day of December, 1991. My Commission expires: 9-30-94.


NOTARY PUBLIC

PREPARED BY THE UNDERSIGNED
MEMBER OF WHITE, McCANN AND
STEWART, ATTORNEYS, 125 S.
MAIN STREET, P. O. BOX 578,
WINCHESTER, KY 40392-0578





COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

June 3, 1999

To: All parties of record

RE: Case No. 99-205

We enclose one attested copy of the Commission's Order in
the above case.

Sincerely,

Stephanie Bell

Stephanie
Secretary

Z 319 084 623

SB/hv
Enclosure

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail (See reverse)

Sent to	
<i>Village Hills Neighborhood Assoc</i>	
Street & Number	
<i>PO BOX 4377</i>	
Post Office, State, & ZIP Code	
<i>Winchester, Ky 40992</i>	
Postage	\$ <i>1.43</i>
Certified Fee	<i>1.40</i>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	<i>1.25</i>
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$ <i>4.08</i>
Postmark or Date	

PS Form 3800, April 1995

*40
99-205*

Verna Hills Neighborhood Association
P. O. Box 4377
Winchester, KY 40992 4377

Butch McCord
109 Robyn Drive
Winchester, KY 40391

Chris Warner
219 Robyn Drive
Winchester, KY 40391

Charles Norton
701 Princeton Drive
Winchester, KY 40391

Honorable Edward L. Yancy
Attorney at Law
P. O. Box 4308
Lexington, KY 40544 4308

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRIS WARNER AND)	
CHARLES NORTON)	
)	
COMPLAINANTS)	
)	
vs.)	CASE NO. 99-205
)	
VERNA HILLS NEIGHBORHOOD)	
ASSOCIATION, INC.)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Verna Hills Neighborhood Association, Inc. ("Verna Hills") is hereby notified that it has been named as defendant in a formal complaint filed on May 13, 1999, a copy of which is attached hereto.

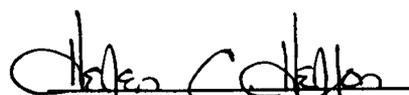
Pursuant to 807 KAR 5:001, Section 12, Verna Hills is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order. Moreover, Verna Hills shall include all documents such as deed restrictions, covenants, and association by-laws relating to Verna Hills' membership requirements.

Documents filed with the Commission in the course of this proceeding shall be served on all parties of record.

Done at Frankfort, Kentucky, this 3rd day of June, 1999.

By the Commission

ATTEST:


Executive Director

Alroy

99-00199

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

CHRIS WARNER)
219 Robyn Drive)
Winchester, KY 40391)

AND)

CHARLES NORTON)
701 Princeton Drive)
Winchester, KY 40391)

CO-COMPLAINANTS)

VS.)

VERNA HILLS NEIGHBORHOOD)
ASSOCIATION, INC.)

DEFENDANT)

RECEIVED

MAY 13 1999

PUBLIC SERVICE
COMMISSION

NO. 99-205

COMPLAINT

The Co-Complainants, Chris Warner and Charles Norton, through counsel, for their complaint respectfully state the following:

1. The Co-Complainants, Chris Warner and Charles Norton reside at 219, Robyn Drive, Winchester, Kentucky 40391 and 701 Princeton Drive, Winchester, Kentucky 40391 respectively; both residences are located within the Verna Hills subdivision.
2. The Co-Complainant Chris Warner is self-employed in the construction industry as a finish carpenter and Co-Complainant Charles Norton is self-employed in the insurance industry as an adjuster.
3. Verna Hills Neighborhood Association, Inc. is a non-profit corporation organized under the laws of the Commonwealth of Kentucky on December 18, 1991, with mailing address

P.O. Box 4377, Winchester, KY 40392-4377 and registered agent Butch McCord, 109 Robyn Dr., Winchester, KY 40391.

4. On September 20, 1993, the Public Service Commission entered an Order attached hereto as Exhibit A, wherein the Public Service Commission authorized the Verna Hills Neighborhood Association, Inc. to assume responsibility for the operation of a sewage treatment plant which served the residences of the Verna Hills subdivision.

5. In 1993 all property owners in Verna Hills subdivision were members of the Verna Hills Neighborhood Association.

6. In 1996 the Board of Directors of the Verna Hills Neighborhood Association, Inc. voted to increase the sanitary sewer service rates it charged to residents of the Verna Hills subdivision.

7. The Board of Directors of Verna Hills Neighborhood Association, Inc. claimed the rate increase was necessary to pay increased costs of operation plus to accumulate a capital reserve account for the purpose of replacing and increasing the capacity of the existing sewage treatment plant.

8. Pursuant to a November 21, 1996 contract between The Boonesboro Water Association, Inc., a non-profit corporation organized on March 22, 1968 under the laws of the Commonwealth of Kentucky, with principal offices at 136 Hud Road, Winchester, Kentucky 40391 and registered agent William A. Dkyeman, W. Hickman Street, No. 31, Winchester, Kentucky 40329-0919, and the Verna Hills Neighborhood Association, Inc., the Boonesboro Water Association, Inc. was agent for collection of Verna Hills Neighborhood Association, Inc.'s charges for sanitary sewer service (See attached Exhibit B). As of January 1998, Kentucky-American Water Company, a for profit corporation incorporated under the laws of the

Commonwealth of Kentucky on February 27, 1882, with principal offices located at 2300 Richmond Rd., Lexington, Kentucky 40502, is the successor in interest to Boonesboro Water Association, Inc.

9. The Co-Complainants, in addition to many other members of the Verna Hills Neighborhood Association, disagreed with the decision of the Board of Directors and requested in January 1997 that the rates not be increased until a study could be conducted by an engineer who was qualified in the area of water and wastewater treatment.

10. With the assistance of Don R. Hassall of the Bluegrass Area Development District, the Co-Complainants and numerous other Verna Hills property owner attempted to convince the Board of Directors the rate increase was not based on objective technical information (See attached Exhibit C).

11. The Board of Directors of Verna Hills Neighborhood Association, Inc. refused to resolve the issues in dispute before instituting the increased rate structure, but resolved to conduct a feasibility study to determine whether the sewage treatment plant needed to be totally replaced within ten years (See attached Exhibit D).

12. The Board of Directors of Verna Hills Neighborhood Association, Inc. consulted with Delaney & Associates, Inc., a sales company representing Hydro-Aerobics, Inc., a manufacturer of water and wastewater treatment equipment. Jerry Delaney, the sales representative presented his proposals and projected costs of replacing the entire treatment plant (See attached Exhibit E).

13. The Co-Complainants continued to ask the Board of Directors to retain an engineer knowledgeable of water and wastewater treatment plants for the purpose of evaluating

the existing sewage treatment plant and advising on whether the existing plant was in need of total replacement.

14. The Board of Directors of Verna Hills Neighborhood Association, Inc. refused to act on the Co-Complainants' request to consult expert technical advisors regarding the proposed plant replacement. Recently, it was suggested by one board member that if the Co-Complainants are in disagreement with the Board of Directors and no longer wish to be members of the neighborhood association, the Co-Complainants can sell their homes and move somewhere other than Verna Hills subdivision.

15. Because of the arbitrary and capricious conduct of the Board of Directors of Verna Hills Neighborhood Association, Inc., the Co-Complainants in 1998 refused to renew their membership in the Verna Hills Neighborhood Association and have maintained their refusal to renew their membership to date.

14. The Verna Hills Neighborhood Association, Inc. brought suit in Clark District Court against the Co-Complainants (Verna Hills Neighborhood Association, Inc. v. Chris Warner, Clark District Court, Small Claims Division, Case No. 99-S-0028 and Verna Hills Neighborhood Association, Inc. v. Charles Norton, Clark District Court, Small Claims Division, Case No. 99-S-0029) in an effort to force the Co-Complainants to renew their membership in the neighborhood association because the Board of Directors did not want the Verna Hills Neighborhood Association, Inc.'s sanitary sewer services to be subject to Public Service Commission rules and regulations (See attached Exhibit F).

15. On April 1, 1999, during the course of the initial hearing in the above referenced lawsuits, the Hon. Judge William Clouse informed the Plaintiff, Verna Hills Neighborhood Association, Inc. that no law existed to coerce the Defendants, Chris Warner and Charles Norton,

to renew their membership in the Verna Hills Neighborhood Association. At the request of the Defendants (Co-Complainants in this Complaint), Judge Clouse continued the Clark District Court case to permit the Public Service Commission time and opportunity to address the Defendants/Co-Complainants' grievances.

16. As of the date of this Complaint, the Co-Complainants are not voluntarily associated with the Verna Hills Neighborhood Association, nor is there any Court order mandating their involvement with the Verna Hills Neighborhood Association.

17. The Co-Complainants do receive sanitary sewer services from the sewage treatment plant owned and operated by the Verna Hills Neighborhood Association, Inc.

18. Verna Hills Neighborhood Association, Inc. owns and operates a sanitary sewer service which provides sewage treatment services to people who are not members of the Verna Hills Neighborhood Association.

19. Verna Hills Neighborhood Association, Inc. is a private owner and operator of a public utility for the delivery of sanitary sewer services.

20. As a private owner and operator of a public utility, Verna Hills Neighborhood Association, Inc. is subject to the jurisdiction of the Public Service Commission.

21. In January 1999, the Co-Complainants were informed by Verna Hills Neighborhood Association, Inc. that membership dues were going to be collected by incorporating said membership dues into the charges assessed for sanitary sewer services, specifically the capital improvements assessment, and collected as part of the combined billing system administered by Kentucky-American Water Company.

22. The billing statement of Kentucky-American Water Company does not itemize or delineate that any portion of the sanitary sewer service charges are for the collection of Verna Hills Neighborhood Association membership dues.

23. In February 1999, Co-Complainant, Chris Warner inquired of Kentucky-American Water Company office personnel whether they were billing Verna Hills residents on behalf of the Verna Hills Neighborhood Association, Inc. for membership fees.

24. Kentucky-American Water Company denied that any portion of the sanitary sewer service charges was related to Verna Hills Neighborhood Association membership dues and emphatically stated they [Kentucky-American Water Company] would not attempt to collect any kind of Verna Hills Neighborhood Association membership fee.

25. Either the Board of Directors of Verna Hills Neighborhood Association, Inc. has misinformed its collection agent, Kentucky-American Water Company of the exact components of the sanitary sewer service charges being assessed, or Kentucky-American Water Company has conspired with Verna Hills Neighborhood Association, Inc. to collect funds from residents of Verna Hills subdivision which are not associated with the sanitary sewer services provided by Verna Hills Neighborhood Association, Inc. as owner and operator of the sewage treatment plant.

26. The President of Verna Hills Neighborhood Association, Inc., Mr. Charlie MacIntosh, has informed Co-Complainant Charles Norton, that the capital improvements account and general fund together have increased to over \$54,000.00 just in the past two years.

27. In the face of growing discontent, the sitting Board of Directors of Verna Hills Neighborhood Association, Inc. have amended the By-Laws of the corporation to assure continued control of the Board and to prevent the general membership of the neighborhood association from being able to exercise any opposition to the Board's decisions.

28. The current rates and charges assessed by Verna Hills Neighborhood Association, Inc. for sanitary sewer services are not based on the cost of providing the sewage treatment services, are unreasonable, arbitrary and unfair.

29. The current charges assessed by Verna Hills Neighborhood Association, Inc. for capital improvements are unreasonable and unfair because there has been no feasibility study performed by competent engineers as to the need for replacement of the physical plant.

30. In the event a properly conducted feasibility study confirms the sewage treatment plan should be replaced within the next ten years, the current property owners are not responsible for paying for expanding the plant capacity and any capital improvement assessment which attempts to collect funds for the expansion of the existing plant is unreasonable and unfair.

31. The portion of the sanitary sewer service charges assessed for the purpose of collecting the Verna Hills Neighborhood Association membership dues is not related to sanitary sewer services and is unlawfully being assessed against the Co-Complainants because they are not members of the Verna Hills Neighborhood Association.

WHEREFORE, the Co-Complainants ask the Public Service Commission to:

a. Order the Defendant to roll back the sanitary sewer service charges to the rates in effect prior to January 1997 and refund to the residents of Verna Hills Subdivision the amount of rate increase collected since January 1997;

b. Investigate the charges and rates of the Defendant to determine whether any rate increase is justified based on the cost of providing only the sewage treatment services and maintaining the existing treatment plant at its current level of capacity;

c. Order the Defendant to conduct a feasibility study to be performed by an engineer qualified in the area of water and wastewater treatment;

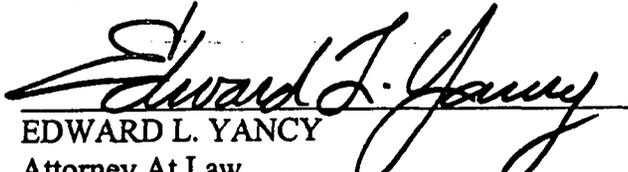
d. In the event said study confirms the need to replace the existing sewage treatment plant, mandate the Defendant seek Commission approval before entering into any procurement contract with said Order to provide for notice to all Verna Hills subdivision property owners and opportunity to be heard on the issue;

e. Order the Defendant to provide itemized billing statements through its agent, Kentucky-American Water Company;

f. Order the Defendant to refund any amount of money collected through its billing agent which is attributable to Verna Hills Neighborhood Association membership dues and to cease and desist any further sanitary sewer service billing practices which attempt to collect funds for any purpose other than the costs associated with providing sewage treatment services; and

g. Order the Defendant to pay the Co-Complainants' costs and reasonable attorney fees associated with this action.

Respectfully submitted,



EDWARD L. YANCY

Attorney At Law

P.O. Box 4308

Lexington, Kentucky 40544-4308

(606)252-7802

Counsel for Co-Complainants

Mailed 4/22/99 1st time.

Mailed 5/12/99 2nd time, cert. mail

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF VERNA HILLS
NEIGHBORHOOD ASSOCIATION, INC. FOR AN
ORDER AUTHORIZING VERNA HILLS LTD. TO
TRANSFER ITS ASSETS TO APPLICANT AND FOR
DETERMINATION OF JURISDICTIONAL STATUS

)
)
) CASE NO. 93-315
)
)

RECEIVED

SEP 20 1993

O R D E R

Division of Financial Analysis

Verna Hills Neighborhood Association, Inc. ("Neighborhood Association") has applied for Commission approval of its proposed acquisition of the sewage treatment facilities of Verna Hills, Ltd. ("Verna Hills"). It also seeks a declaratory ruling on its jurisdictional status after this acquisition.

After reviewing the application and being otherwise sufficiently advised, the Commission finds as follows:

1. Verna Hills is a Kentucky corporation which owns and operates the subdivision treatment facility plant providing sewer service for compensation to the residents of the Verna Hills Subdivision of Clark County, Kentucky, and is a utility under Commission jurisdiction. KRS 278.010(3)(f).

2. The Neighborhood Association is a non-stock, non-profit corporation organized under the provisions of KRS Chapter 273 and composed of all real property owners within the Verna Hills Subdivision.

3. The Neighborhood Association's members depend upon Verna Hills sewage treatment facilities for sewer service. No other

EXHIBIT

A

public or private sewage treatment facility provides service to the Verna Hills Subdivision.

4. Verna Hills has agreed to the transfer of its sewage treatment facilities to the Neighborhood Association.

5. The Neighborhood Association has retained a certified wastewater treatment plant operator to operate the sewage treatment facilities.

6. The Neighborhood Association's members are served by Verna Hills' sewage treatment facilities and have a significant financial interest in their maintenance and operation. Moreover, the Neighborhood Association has the authority to assess its members for expenses related to the maintenance and operation of these facilities. This ability to assess its members is adequate evidence of its financial integrity to ensure the continuity of service. No third party beneficiary agreement is required. 807 KAR 5:071, Section 3(1)(a).

7. The Neighborhood Association has the financial, technical, and managerial abilities to provide reasonable service.

8. The characterization of service as public depends "upon whether or not it is open to the use of the public who may require it, to the extent of its capacity." Ambridge v. Pub. Serv. Comm'n of Pennsylvania, 165 A.47, 49 (Pa. Super. 1933). "One offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities." North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966).

9. After the proposed transfer is completed, the sewage treatment facilities will serve a defined, privileged, and limited group -- the Neighborhood Association's members. The facilities will not be serving the public. The Neighborhood Association will not, therefore, be a utility. KRS 278.010. See also Lockwood Water Users Ass'n v. Anderson, 542 P.2d 1217 (Mont. 1975); Re Stonecrest Manor Water Service, 13 PUR3d 123 (Conn. P.U.C. 1956).

IT IS THEREFORE ORDERED that:

1. The proposed transfer of sewage treatment facilities from Verna Hills to the Neighborhood Association is approved.

2. Within 10 days of the date of completion of transfer, the Neighborhood Association shall advise the Commission in writing of its completion.

3. Until the transfer has occurred, the sewage treatment facility shall remain under Commission jurisdiction.

4. Within 30 days of the completion of transfer, Verna Hills shall submit a complete and accurate annual report for the period from January 1, 1993 to the date of transfer.

5. Upon completion of the transfer, the Neighborhood Association will not be a utility subject to Commission jurisdiction. Any subsequent change in the Neighborhood Association's membership policies or its provision of service to persons outside the existing Verna Hills Subdivision, however, may subject the Neighborhood Association to Commission jurisdiction.

Done at Frankfort, Kentucky, this 16th day of September, 1993.

By the Commission

ATTEST:



Executive Director

THIS SERVICE AGREEMENT is made and entered into this 21st
day of November, 1996, by and between BOONESBORO WATER
ASSOCIATION, INC., 136 Hud Road, Winchester, Kentucky 40391,
(hereinafter referred to as "BWA"), and VERNA HILLS NEIGHBORHOOD
ASSOCIATION, INC. (hereinafter referred to as "VHNA"), whose
address is Post Office Box 4377, Winchester, Kentucky 40392.

WITNESSETH: That, whereas, VHNA is the operator of the
sanitary sewer system and appurtenances thereto serving the sub-
division of Verna Hills, Clark County, Kentucky; and

WHEREAS, VHNA has established charges for sanitary sewer
services based upon water usage by its customers; and

WHEREAS, BWA is engaged in the business of providing water
service to certain areas or territories within Clark County,
Kentucky, including but not limited to Verna Hills Subdivision,
located on the north side of U. S. 60 in Clark County, Kentucky;
and

WHEREAS, VHNA has requested BWA to provide billing services
for the sewer charges assessed to the residents of Verna Hills
subdivision, and

WHEREAS, BWA is willing to provide this billing service,
under conditions specified herein;

NOW, THEREFORE, for and in consideration of the mutual
benefits to be derived by the parties hereto, the parties covenant
and agree as follows:

1. VHNA shall notify their customers by direct mail about
this agreement including the date or month that BWA will begin
providing this billing service. A copy of this letter will be
furnished BWA for inclusion in each customers' file.

EXHIBIT

B

2. VHNA shall coordinate the sewer billing date to correspond to the billing date for water service.

3. VHNA shall coordinate the due date of the sewer bill to the water bills to eliminate multiple disconnects. The date on which the sewer bill becomes delinquent will correspond with date the water bill becomes delinquent.

4. VHNA shall coordinate the changeover from a flat fee to billings based on water usage and shall bill and collect for any partial months caused by this change.

5. VHNA shall adopt a late fee charge compatible with the late fee charged water customers by BWA.

6. BWA shall compute each sewer bill based on the water usage and shall include this amount as a second line on the water bill.

7. BWA shall maintain an individual account for the Verna Hills Neighborhood Association in their accounting system in order to identify all charges and collections applicable to the Verna Hills sewer charges.

8. In the event a customer does not pay the water and/or sewer bill by the due date, BWA will initiate a letter to the customer giving notification that their account is past due and if payment is not received by the specified date, their service will be discontinued and there will be a fee for reinstating the service. This fee is retained by BWA to cover the costs of reinstating the service once the charges and fees have been paid. VHNA shall indemnify and hold harmless BWA from all costs, including reasonable attorneys' fees, arising out of such termination of sewer service.

charges billed for each month with the minimum charge to be \$200. A check will be issued by BWA no later than the 25th of each month for the amount of collections for the month less the BWA fee for billing. A list of accounts collected and accounts that are delinquent will be furnished to VHNA along with the check.

10. In the event a customer moves leaving an unpaid balance, BWA will notify VHNA and it will be the responsibility of the VHNA to pursue collection of the sewer charges.

11. This agreement shall become effective on the day and year first above written and shall remain in effect until terminated by either party giving ninety (90) days advance notice in writing to the other party.

This Agreement has been executed by the parties hereto, by their appropriate authorized representatives, and a certified copy of the resolutions of the governing authorities of each is attached hereto.

BOONESBORO WATER ASSOCIATION, INC.

BY: *James A. [Signature]*

VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.

BY: *B.C. McCord*
B.C. McCord
President

RESOLUTION

At the regular meeting of the Board of Directors of the Boonesboro Water Association, Inc., duly held on the 14th day of November 1996, the following resolution, which is still in force and effect, was duly adopted and a written record thereof made, namely:

"RESOLVED, that the President and Secretary/Treasurer be and they are hereby authorized on behalf of the Association to execute an agreement with the Verna Hills Neighborhood Association, Inc. to provide billing services to the Verna Hills Neighborhood Association for their sewer charges."

TYPEWRITTEN NAME	TITLE	SIGNATURE
<u>Harold A. Adams</u>	President	<u>Harold A. Adams</u>
<u>David A. Sizemore</u>	Secretary/Treasurer	<u>David A. Sizemore</u>

"IT IS FURTHER RESOLVED, that all parties involved are authorized to rely upon the aforesaid resolution until receipt by it of written notice of any change or revocation thereof."

We certify that the above is a true copy of a resolution adopted under date given, is still in effect and it does not conflict with any of the by-laws of the corporation.

Signed and delivered this 14th day of November 1996.

Harold A. Adams
President

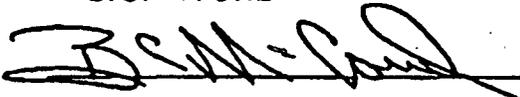
Corporate Seal

David A. Sizemore
Secretary/Treasurer

RESOLUTION

At the regular meeting of the Board of Directors of the Verna Hills Neighborhood Association, Inc., duly held on the 21st day of November 1996, the following resolution, which is still in force and effect, was duly adopted and a written record thereof made, namely:

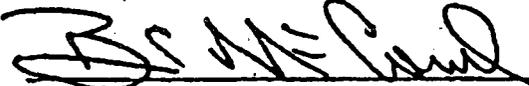
"RESOLVED, that the President and the Secretary be and they are hereby authorized on behalf of the Association to execute an agreement with the Boonesboro Water Association, Inc. for Boonesboro Water Association to provide billing services for the Verna Hills sewer charges."

TYPEWRITTEN NAME	TITLE	SIGNATURE
B. C. McCord	President	
Loretta Carbine	Secretary	

"IT IS FURTHER RESOLVED, that all parties involved are authorized to rely upon the aforesaid resolution until receipt by it of written notice of any change or revocation thereof."

We certify that the above is a true copy of a resolution adopted under date given, is still in effect and it does not conflict with any of the by-laws of the corporation.

Signed and delivered this 21st day of November 1996.



President



Secretary


Denise Fischer - Notary
7-13-97

1997 SEWER RATE OPPOSITION - VERNA HILLS

as explained by Baird Fraser, and understood by Loretta Carbine

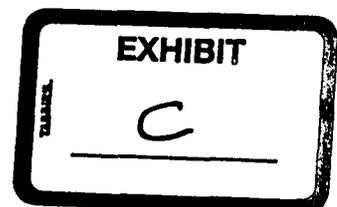
January, 1997

Observations:

- Sewer Rate Comparison - Bluegrass ADD Cities over Population 2,500 (attached) Verna Hills new rates - very high.
- Don R. Hassall, Bluegrass Area Development District has indicated cost of replacement to be about \$141,000 for a 30,000 gpd system (larger than VI I)
- There are companies that offer synthetic rubber liners for digesters, when required.
- There are SRF (State Revolving Funds) loans available, if under the PSC. Private, as Verna Hills, may not be eligible, but possibility could be pursued. These loans are very low interest, even in the 2% range.
- WMU will send a plant inspector, at some \$90 per hour, 6 - 7 hours, for full inspection and recommendations. (Total cost: approx. \$700)

Opposition Requires:

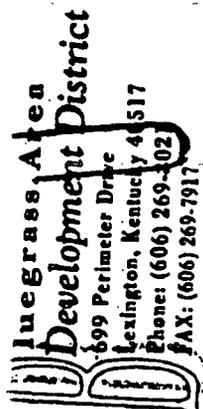
- Rate back to \$20.40, retroactive to 1/1/97
- Inspection and recommendations regarding future hazards, major expenses, replacement.
- Committee of residents, consisting of at least 3 members, to study rates and make recommendations to the Board.
- Opposition readily suggests a "Minimum Charge", with much more reasonable rates.
- Opposition has no problem with BWA administering Sewer billing, as cost is offset by savings of the bookkeeper position.
- Opposition has no problem with an "Escrow" or "Depreciation" account, but does seriously question the dollar figures needed, and how to attain them. Expects that all residents will be fully aware of accounting on an ongoing basis.
- Opposition has hired an attorney to pursue the legalities of the Neighborhood Assoc.. recent actions, and future. i.e. would Verna Hills be better off being under the Public Service Commission?



1/07 SEWER RATE OPPOSITION PETITION - VERNA HILLS

Board Representative	Homes Represented	Voted YES	Voted NO	Did Not Vote
Randy Johnson	16	3	1	11
Trudy Glover	15	7	1	7
Butch McCord	16	9	1	6
Clarietta Witt	13	6	1	6
Loretta Carbine	15	9	1	5
Larry Neavill	17	16	1	
Todd Peyton	14	6	1	7
Fred Brown	18	13	2	3
Jim Greene	14	11	0	3
Kathy Keller	18	10	3	5
	156	90	12	53
65% of Residents Voted				
58% of Residents Voted in favor of petition; which read:				
"Would you as a resident of Verna Hills, and a Member of the association, prefer to maintain the \$20.40 per month sewer rate, pending professional advice as to whether the neighborhood will be in need of a new sewer treatment facility within the next 10 years and, if so, how such facility will be financed?"				

ATTACHMENT
#2



DON R. HASSALL, P. E.
Assistant Executive Director

TABLE 2
SEWER RATE COMPARISON
(In Gallons and Cubic Feet)
for
Bluegrass ADD Cities Over Population 2,500

Effective Date for Rates	Min. Bill	Min. Quantity (gal.)	Cost Per Month For:												
			3,000 Gallons (400 cf)	4,000 Gallons (533 cf)	6,000 Gallons (800 cf)	30,000 Gallons (4,000 cf)	300,000 Gallons (40,000 cf)	% Dev. from Mean	Rank	% Dev. from Mean	Rank	% Dev. from Mean			
Berea Apr-85	\$6.35	1500	\$11.15	\$14.34	\$20.75	\$97.55	\$961.55	19	14	14	14	14	15	15	24
Cynthiana Jul-92	4.51	2000	6.34	8.17	11.83	55.75	549.85	-32	4	4	4	4	5	5	-29
Darville Nov-92	2.33	0	6.56	7.97	10.79	44.65	927.16	-30	2	2	2	2	2	2	19
Frankfort Aug-94	5.48	2000	8.22	10.96	16.44	82.20**	852.00	-12	7	8	8	10	10	10	10
Georgetown Jul-93	6.00	2000	10.28	14.56	23.12	125.84	1,281.44	10	16	16	17	17	12	12	10
Harrodsburg Mar-80	6.25	1875	9.70	12.76	18.80	86.50	720.50	4	11	12	12	12	17	17	65
Irvine Nov-92	6.43	2000	10.07	12.52	17.42	62.32	472.82	8	9	9	9	9	9	9	-7
Lawrenceburg Jan-90	4.91	1000	14.73	19.64	29.46	147.30	1,473.00	17	17	18	18	18	3	3	-39
Lawrenceburg Jul-91	7.80	2000	10.90	14.00	20.20	86.60	596.60	15	13	13	13	13	18	18	90
Lexington Jul-82	0.00	0	5.92	8.31	13.12	72.00**	720.00	37	5	5	5	7	6	6	-23
Nicholasville Aug-89	2.60	0	10.43	13.04	18.26	80.90	785.60	11	12	11	11	7	8	8	-7
Paris Jan-91	7.30	2000	9.55	11.80	16.30	64.30	478.30	2	8	7	6	6	10	10	1
Richmond Apr-83	4.84	2250	6.24	8.10	11.68	51.36	401.86	-2	3	3	3	3	4	4	-38
Stanford Aug-92	7.20	2000	9.91	12.62	18.04	83.08	814.78	6	10	10	11	11	2	2	-48
Stanford Sep-87	10.35	1000	16.55	19.65	25.85	100.25	937.25	18	18	17	15	15	11	11	5
Stanford Jul-92	2.10	1000	3.91	4.81	6.62	26.48	244.84	77	1	1	1	1	14	14	21
Versailles Jul-94	4.83	2000	7.36	9.89	14.95	75.67	701.27	-58	1	1	1	1	1	1	-69
Wilmore Jul-94	4.83	2000	7.36	9.89	14.95	75.67	701.27	-21	6	6	6	8	7	7	-10
Winchester Nov-92	2.68	750	10.72	14.28	21.44	107.20	1,072.00	15	15	15	16	16	16	16	38
Mean	\$5.11		\$9.36	\$12.08	\$17.50	\$80.55	\$777.26								

* Industrial Rate
** Commercial Rate Values

About the **NSFC**

The National Small Flows Clearinghouse (NSFC) was established in 1977 with the passage of the Clean Water Act to provide technical assistance and information services about "small flows" wastewater treatment systems. A "small flows" system is one that has one million gallons or less of wastewater flowing through it each day, ranging from septic systems to small sewage treatment plants.

Funded by the U.S. Environmental Protection Agency, the NSFC provides information about innovative, low-cost wastewater treatments for small communities, those with populations less than 10,000. Emphasis is placed on finding practical, alternative solutions for "small flows" wastewater problems.

NSFC helps homeowners, renters, citizens' groups, local industry leaders, research scientists, educators, local government officials, state government officials, consultants, manufacturers, operators and maintainers, contractors, and related professionals. The program addresses a range of wastewater-related topics, including:

- treatment technologies,
- design and monitoring information,
- financial issues,
- planning strategies,
- regulations, and
- education.

The NSFC is one of three "sister" organizations located at West Virginia University. The National Drinking Water Clearinghouse (NDWC) offers a range of information services about small community drinking water issues. The National Environmental Training Center for Small Communities (NETCSC) provides training assistance information, develops courses, and conducts training to help improve drinking water, wastewater, and solid waste services in communities of less than 10,000.

While each of the three organizations has a separate mission and distinct goals, they work collectively to protect human health and the environment by providing a one-stop shop for small community drinking water, wastewater, and environmental training information and technical assistance.



NSFC CONTENTS / CONTACT US

Visit our sister organizations' sites for more information on environmental training and drinking water treatment solutions for small communities.

[Home](#) / [About Us](#) / [Contact Us](#) / [National Environmental Training Center for Small Communities](#) / [National Drinking Water Clearinghouse](#)

Please bookmark us at [www.nsfcclearinghouse.org](#), and visit frequently for updates to this site.
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This page last modified on Monday, November 11, 1996

Norton
701 Princeton Dr

VERNA HILLS NEIGHBORHOOD ASSOCIATION

P. O. Box 4377
Winchester, KY 40392 - 4377

January 19, 1997

TO: Joe Stearns, Baird Fraser, Chris Warner

RE: OPPOSITION TO SEWER TREATMENT RATES

The Verna Hills Neighborhood Association makes the following proposal; to resolve the issue of opposition to recent Sewer Treatment rates of \$7.00 per 1,000, billed by Boonesboro Water.

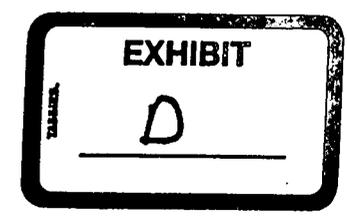
- 1) Effective February 1, 1997, rates to be set at
 - A) \$9.00 flat fee for each resident, to be deposited in a Capital Improvements Account.
 - B) Usage rate, based on BWA water usage, of \$4.43 per 1,000 gallons.
- 2) January 1, each year, rates to be adjusted based on the Consumer Price Index, plus 1%.
- 3) Feasibility study, and action to encase the Sewer Treatment Plant Digester (the most likely unit to fail) with concrete, rubber liner, etc., to assure the continued operation of the plant as long as possible, before consideration given to total replacement.

The above proposal, made in good faith and believed to be equitable to all concerned.

Verna Hills Neighborhood Association Board of Directors

Burt McCard
Randy G. Galt
Terry Thrash
Loretta Carbone

Jim Greene
Luella Poynter
Kathy Keller
Christina Witt



VERNA HILLS - 10 YEAR SEWER TREATMENT PLANT DEPRECIATION PLAN
January, 1997

3 YEAR HISTORY OF VIINA

MEMBERSHIP ACCOUNT (Christmas neighborhood activities/donations, flowers at entrance, future rebuilding of wall at entrance, flower fund, office supplies, expenses of Newsletter, block parties, etc. i.e. Any expense for good or pleasure of Verna Hills residents, as a whole)

INCOME: \$20.00 per year x 156 = \$3,120
1994 Yr End Balance - \$3,905.18
1995 Yr End Balance - \$5,918.63 (CD - \$5,235.16)
1996 Yr End Balance - \$8,312.46 (CD - \$5,509.56)

SEWER TREATMENT ACCOUNT (Office supplies, and ANY expense incurred within or around fenced area, sewer lines, manholes, pump station. i.e. any expense directly related to the function of the Sewer Treatment Plant (STP).

INCOME: \$20.40 x 156 = \$3,182.40 per month, x 12 = \$38,188.80 per year

1994 - IN: \$43,028.00	OUT: \$36,749.08	BALANCE END '94: \$13,531.74
1995 - IN: \$39,218.92	OUT: \$39,307.25	BALANCE END '95: \$13,443.41
1996 - IN: \$39,758.70	OUT: \$38,059.81	BALANCE END '96: \$15,142.30

Consumer Price Index (Cost of Living) = 2.9% per year
Lexington Chamber of Commerce, or
U. S. Department of Labor Statistics, Frankfort (502) 564-7976

Average STP expense - 3 years = \$38,072.05 / at 2.9% increase per year, we should use a figure such as \$40,000, or \$42,000, at least, knowing it could increase. Resulting in:
Assumption: Average water usage 790,000 gallons per month (Jan - July 1996)

For \$40,000 income per year, or \$3,335. per month = \$4.22 per 1,000 gallons
(\$3,335 divided by 790 average use)
For \$42,000 income per year, or \$3,500 per month - \$4.43 per 1,000 gallons
(3,500 divided by 790 average use)

DEPRECIATION FUND DOLLARS WOULD BE IN ADDITION TO ABOVE OPERATING EXPENSE FUNDS.

Loretta Carbone

VERNA HILLS - 10 YEAR SEWER TREATMENT PLANT DEPRECIATION PLAN

January, 1997

Assumptions: \$9.00 per month, per residence (156) = \$1,404 per month, \$16,848 per year

\$1,404 per month, 10 years, at 2.9% interest

Your Savings Plan from 1/18/97 through 1/18/07

Savings Goal: 194,798.52

When you want to reach your goal: 10 Years

Savings you have now: 0.00

Annual yield on savings: 2.9 %

Regular contribution amount: 1,404.00 monthly

\$1,404 per month, 10 years, at 5.5% interest

Your Savings Plan from 1/18/97 through 1/18/07

Savings Goal: 222,339.39

When you want to reach your goal: 10 Years

Savings you have now: 0.00

Annual yield on savings: 5.5 %

Regular contribution amount: 1,404.00 monthly

\$1,404 per month, 5 years, at 2.9% interest

Your Savings Plan from 1/18/97 through 1/18/02

Savings Goal: 90,450.10

When you want to reach your goal: 5 Years

Savings you have now: 0.00

Annual yield on savings: 2.9 %

Regular contribution amount: 1,404.00 monthly

\$1,404 per month, 5 years, at 5.5% interest

Your Savings Plan from 1/18/97 through 1/18/02

Savings Goal: 96,377.65

When you want to reach your goal: 5 Years

Savings you have now: 0.00

Annual yield on savings: 5.5 %

Regular contribution amount: 1,404.00 monthly

Based on \$300,000 replacement Cost - at 2.9% interest, 10 years, contribution should be:

Your Savings Plan from 1/18/97 through 1/18/07

Savings Goal: 300,000.00

When you want to reach your goal: 10 Years

Savings you have now: 0.00

Annual yield on savings: 2.9 %

Regular contribution amount: monthly 2,162.23

Loretta Corbino

DELANEY & ASSOCIATES, INC.

(606) 342-4944
FAX (606) 342-8331

WATER AND WASTEWATER EQUIPMENT

February 18, 1997

Ms. Loretta Carbine
Verna Hill Neighborhood Association
P.O. Box 4377
Winchester, Ky 40392-4377

RE: Package Waste Water Treatment Plant

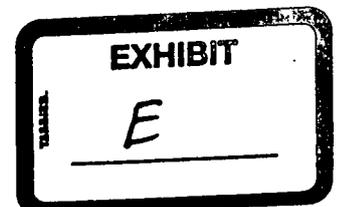
Dear Ms. Carbine:

On February 11th, 1997 I met your operator, Van Bugg. We inspected the existing waste water treatment plant facilities and the pumping station.

There are a number of items that the package plant will probably need within the next year. This would consist of repairs to the return sludge trough, which could be replaced with a PVC pipe. The air header that goes to all the air drops has corroded, and will probably need to be replaced in the near future.

A sewage treatment plant life is hard to determine when you would not be able to use it whatsoever. There is major rusting that has taken place on the surface that we could see, and I would anticipate that 5 years would be the maximum that you would want to consider replacing the unit. There is a good chance, with changes to the sludge return line, air line, sandblasting, and painting to the surface area, may allow the waste water plant to extend 5 years. There would be quite a bit of work needed to accomplish this for the existing steel. Van informed me the blowers and motors are pretty much original, and replacement on these mechanical items could be any day. The comminutor for the grinder in front of the treatment plant has been abandoned. The state is not requiring Van to replace it, as long as a good performance of the plant continues to occur.

We represent Hydro-Aerobics, which is a package plant manufacturer. I have enclosed a general brochure for their treatment plants. Replacement of your existing plant will not be an easy duplication. The only way to replace the waste water treatment plant and use the existing lagoon is to remove the existing plant and place a new one in its place. To accomplish this, you will need



a special permit from the state, and bypass the plant for a minimum of 2 weeks, possibly 3, to install a new plant.

Based on the hydraulic conditions that Van explained to me that occurs at this plant due to infiltration problems, I would recommend that the lagoon be kept as a buffer for the peak flow conditions. If a new plant is installed at the existing lagoon, there would most likely be a need for a surge holding chamber, or another lagoon.

The replacement of the new sewage treatment plant to meet the anticipated new guidelines from the state of Kentucky would require the aeration tanks and clarifiers to be separated by a wall, which doesn't exist now. With a sludge holding tank and the separate chlorine contact tank that you have now, we would anticipate the cost in 1997 prices at \$97,000, with materials delivered to the job site. Installation could vary based on how you would approach it. I would say it would be from \$50,000 - \$70,000 to accommodate the installation. It could even be more depending on how you would approach the removal of the old plant. It may be beneficial if you want to get a more definite installation price to contact a contractor. If that is the case, I could give you a contractor to contact.

In talking to Hydro-Aerobics, budgetary numbers are just what they are. They are budgetary on the cost that we would sell the equipment today. To tell you what it would be in 5 or 10 years is pretty much based on the cost of steel. I would recommend to increase the material cost on a minimum of 4% a year as a factor that would need to be added to the material cost of the waste water treatment plant for your future budgeting.

I would anticipate the pumps and valves at the pump station to be replaced before the package sewage treatment plant. Considering conditions of the wet well cover, the piping, and Van informing me that the pumps have been rebuilt more than once, I would anticipate the replacement of the pumps within 5 years.

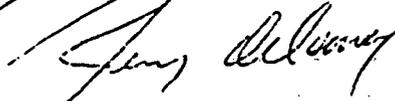
Not knowing the conditions exactly, I cannot give you an exact price on the pumps. Van estimated that the pumps were approximately 10 HP. The existing pumps are ABS submersible pumps, which is the same manufacturer that we represent in submersible type pumps. Costs just to replace the pumps and rail bases would be approximately \$8,000-\$9,000, for today's costs, which would include the aluminum access cover that would be needed on top of the wet well at the same time. The valves and piping that are part of the pump station would normally range an additional \$4,000 material costs. The installation for a changeout of this would most likely be an additional

Ms. Loretta Carbone
February 18, 1997
Page 3

\$8,000. They would have to do this at a lower flow demand time, as well as have a number of people available to do it as quickly as possible, to put it back in operation. It appears that your control panel looks very good and that would not be required to be replaced. With the material costs of approximately \$11,000-\$13,000, and a labor costs of approximately \$6,000-\$8,000, you would probably want to budget an \$21,000 figure for replacement of the pump station.

Based on the information I've acquired in my meeting with Van, these are very preliminary prices. I do believe they will cover the material costs. I am estimating the labor based on other projects we have done. In each case, the labor for the package plant or the pump station could vary. I do have a contractor that is in the Lexington area that would probably assist you on request. I don't believe you could get a formal idea of the installation of this by your deadline of February 20th. The contact would be Brian Nash of NAC Heavy Highway, who I have worked with on a couple of recent package plants that would be able to assist you in reviewing this. Brian's phone number is 606-263-3102.

Sincerely,



Jerry A. Delaney

JAD/djf

F.O. BOX 4377
WINCHESTER, KY. 40392-4377

05-01-98

Mr. & Mrs. Warner
219 Robyn Drive
Winchester, Ky. 40391

Mr. & Mrs. Warner,

As of ~~4-30-98~~ my records indicate we have not received your 1998 Verna Hills Neighborhood Assoc. dues for the amount of \$20.

As stated in previous letter, each household must be a dues paying member of the Verna Hills Neighborhood Assoc. in order to keep the sewage treatment plant a privately owned plant and not subject to the rules and regulations of the Public Service Commission.

Please make your check payable to Verna Hills Neighborhood Association and mark as "Membership Dues". Mail the check to the above address, Attn: Treasurer.

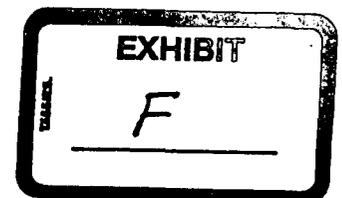
This is your third and final notice for the 1998 Membership Dues.

In fairness to all homeowners if payment is not received by 5-30-98, Verna Hills Neighborhood Assoc. will file with Small Claims Court to collect the 1998 Dues in the amount of \$20. The cost of filing is \$36 which is due on the day the file is claimed. Whoever loses the case is liable for the \$36. If you choose to pay the Membership Dues prior to court date but after Verna Hills Neighborhood Association has filed with Small Claims Court, you will be responsible for the \$36 filing fee.

Thank you in advance for your cooperation.

Rebecca A. Frye

Rebecca A. Frye
Treasurer





COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

May 18, 1999

To: All parties of record

RE: Case No. 99-205
VERNA HILLS, LTD. VERNA HILLS SUBDIVISION
(Complaints - Rates, Service) OF CHRIS WARNER & CHARLES NORTON

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received May 13, 1999 and has been assigned Case No. 99-205. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell
Secretary of the Commission

SB/jc

Verna Hills Neighborhood Association
P. O. Box 4377
Winchester, KY. 40992 4377

Butch McCord
109 Robyn Drive
Winchester, KY. 40391

Chris Warner
219 Robyn Drive
Winchester, KY. 40391

Charles Norton
701 Princeton Drive
Winchester, KY. 40391

Honorable Edward L. Yancy
Attorney at Law
P. O. Box 4308
Lexington, KY. 40544 4308

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

CHRIS WARNER)
219 Robyn Drive)
Winchester, KY 40391)

AND)

CHARLES NORTON)
701 Princeton Drive)
Winchester, KY 40391)

CO-COMPLAINANTS)

VS.)

VERNA HILLS NEIGHBORHOOD)
ASSOCIATION, INC.)

DEFENDANT)

RECEIVED

MAY 13 1999

PUBLIC SERVICE
COMMISSION

NO. 99-205

COMPLAINT

The Co-Complainants, Chris Warner and Charles Norton, through counsel, for their complaint respectfully state the following:

1. The Co-Complainants, Chris Warner and Charles Norton reside at 219, Robyn Drive, Winchester, Kentucky 40391 and 701 Princeton Drive, Winchester, Kentucky 40391 respectively; both residences are located within the Verna Hills subdivision.

2. The Co-Complainant Chris Warner is self-employed in the construction industry as a finish carpenter and Co-Complainant Charles Norton is self-employed in the insurance industry as an adjuster.

3. Verna Hills Neighborhood Association, Inc. is a non-profit corporation organized under the laws of the Commonwealth of Kentucky on December 18, 1991, with mailing address

P.O. Box 4377, Winchester, KY 40392-4377 and registered agent Butch McCord, 109 Robyn Dr., Winchester, KY 40391.

4. On September 20, 1993, the Public Service Commission entered an Order attached hereto as Exhibit A, wherein the Public Service Commission authorized the Verna Hills Neighborhood Association, Inc. to assume responsibility for the operation of a sewage treatment plant which served the residences of the Verna Hills subdivision.

5. In 1993 all property owners in Verna Hills subdivision were members of the Verna Hills Neighborhood Association.

6. In 1996 the Board of Directors of the Verna Hills Neighborhood Association, Inc. voted to increase the sanitary sewer service rates it charged to residents of the Verna Hills subdivision.

7. The Board of Directors of Verna Hills Neighborhood Association, Inc. claimed the rate increase was necessary to pay increased costs of operation plus to accumulate a capital reserve account for the purpose of replacing and increasing the capacity of the existing sewage treatment plant.

8. Pursuant to a November 21, 1996 contract between The Boonesboro Water Association, Inc., a non-profit corporation organized on March 22, 1968 under the laws of the Commonwealth of Kentucky, with principal offices at 136 Hud Road, Winchester, Kentucky 40391 and registered agent William A. Dkyeman, W. Hickman Street, No. 31, Winchester, Kentucky 40329-0919, and the Verna Hills Neighborhood Association, Inc., the Boonesboro Water Association, Inc. was agent for collection of Verna Hills Neighborhood Association, Inc.'s charges for sanitary sewer service (See attached Exhibit B). As of January 1998, Kentucky-American Water Company, a for profit corporation incorporated under the laws of the

Commonwealth of Kentucky on February 27, 1882, with principal offices located at 2300 Richmond Rd., Lexington, Kentucky 40502, is the successor in interest to Boonesboro Water Association, Inc.

9. The Co-Complainants, in addition to many other members of the Verna Hills Neighborhood Association, disagreed with the decision of the Board of Directors and requested in January 1997 that the rates not be increased until a study could be conducted by an engineer who was qualified in the area of water and wastewater treatment.

10. With the assistance of Don R. Hassall of the Bluegrass Area Development District, the Co-Complainants and numerous other Verna Hills property owner attempted to convince the Board of Directors the rate increase was not based on objective technical information (See attached Exhibit C).

11. The Board of Directors of Verna Hills Neighborhood Association, Inc. refused to resolve the issues in dispute before instituting the increased rate structure, but resolved to conduct a feasibility study to determine whether the sewage treatment plant needed to be totally replaced within ten years (See attached Exhibit D).

12. The Board of Directors of Verna Hills Neighborhood Association, Inc. consulted with Delaney & Associates, Inc., a sales company representing Hydro-Aerobics, Inc., a manufacturer of water and wastewater treatment equipment. Jerry Delaney, the sales representative presented his proposals and projected costs of replacing the entire treatment plant (See attached Exhibit E).

13. The Co-Complainants continued to ask the Board of Directors to retain an engineer knowledgeable of water and wastewater treatment plants for the purpose of evaluating

the existing sewage treatment plant and advising on whether the existing plant was in need of total replacement.

14. The Board of Directors of Verna Hills Neighborhood Association, Inc. refused to act on the Co-Complainants' request to consult expert technical advisors regarding the proposed plant replacement. Recently, it was suggested by one board member that if the Co-Complainants are in disagreement with the Board of Directors and no longer wish to be members of the neighborhood association, the Co-Complainants can sell their homes and move somewhere other than Verna Hills subdivision.

15. Because of the arbitrary and capricious conduct of the Board of Directors of Verna Hills Neighborhood Association, Inc., the Co-Complainants in 1998 refused to renew their membership in the Verna Hills Neighborhood Association and have maintained their refusal to renew their membership to date.

14. The Verna Hills Neighborhood Association, Inc. brought suit in Clark District Court against the Co-Complainants (Verna Hills Neighborhood Association, Inc. v. Chris Warner, Clark District Court, Small Claims Division, Case No. 99-S-0028 and Verna Hills Neighborhood Association, Inc. v. Charles Norton, Clark District Court, Small Claims Division, Case No. 99-S-0029) in an effort to force the Co-Complainants to renew their membership in the neighborhood association because the Board of Directors did not want the Verna Hills Neighborhood Association, Inc.'s sanitary sewer services to be subject to Public Service Commission rules and regulations (See attached Exhibit F).

15. On April 1, 1999, during the course of the initial hearing in the above referenced lawsuits, the Hon. Judge William Clouse informed the Plaintiff, Verna Hills Neighborhood Association, Inc. that no law existed to coerce the Defendants, Chris Warner and Charles Norton,

to renew their membership in the Verna Hills Neighborhood Association. At the request of the Defendants (Co-Complainants in this Complaint), Judge Clouse continued the Clark District Court case to permit the Public Service Commission time and opportunity to address the Defendants/Co-Complainants' grievances.

16. As of the date of this Complaint, the Co-Complainants are not voluntarily associated with the Verna Hills Neighborhood Association, nor is there any Court order mandating their involvement with the Verna Hills Neighborhood Association.

17. The Co-Complainants do receive sanitary sewer services from the sewage treatment plant owned and operated by the Verna Hills Neighborhood Association, Inc.

18. Verna Hills Neighborhood Association, Inc. owns and operates a sanitary sewer service which provides sewage treatment services to people who are not members of the Verna Hills Neighborhood Association.

19. Verna Hills Neighborhood Association, Inc. is a private owner and operator of a public utility for the delivery of sanitary sewer services.

20. As a private owner and operator of a public utility, Verna Hills Neighborhood Association, Inc. is subject to the jurisdiction of the Public Service Commission.

21. In January 1999, the Co-Complainants were informed by Verna Hills Neighborhood Association, Inc. that membership dues were going to be collected by incorporating said membership dues into the charges assessed for sanitary sewer services, specifically the capital improvements assessment, and collected as part of the combined billing system administered by Kentucky-American Water Company.

22. The billing statement of Kentucky-American Water Company does not itemize or delineate that any portion of the sanitary sewer service charges are for the collection of Verna Hills Neighborhood Association membership dues.

23. In February 1999, Co-Complainant, Chris Warner inquired of Kentucky-American Water Company office personnel whether they were billing Verna Hills residents on behalf of the Verna Hills Neighborhood Association, Inc. for membership fees.

24. Kentucky-American Water Company denied that any portion of the sanitary sewer service charges was related to Verna Hills Neighborhood Association membership dues and emphatically stated they [Kentucky-American Water Company] would not attempt to collect any kind of Verna Hills Neighborhood Association membership fee.

25. Either the Board of Directors of Verna Hills Neighborhood Association, Inc. has misinformed its collection agent, Kentucky-American Water Company of the exact components of the sanitary sewer service charges being assessed, or Kentucky-American Water Company has conspired with Verna Hills Neighborhood Association, Inc. to collect funds from residents of Verna Hills subdivision which are not associated with the sanitary sewer services provided by Verna Hills Neighborhood Association, Inc. as owner and operator of the sewage treatment plant.

26. The President of Verna Hills Neighborhood Association, Inc., Mr. Charlie MacIntosh, has informed Co-Complainant Charles Norton, that the capital improvements account and general fund together have increased to over \$54,000.00 just in the past two years.

27. In the face of growing discontent, the sitting Board of Directors of Verna Hills Neighborhood Association, Inc. have amended the By-Laws of the corporation to assure continued control of the Board and to prevent the general membership of the neighborhood association from being able to exercise any opposition to the Board's decisions.

28. The current rates and charges assessed by Verna Hills Neighborhood Association, Inc. for sanitary sewer services are not based on the cost of providing the sewage treatment services, are unreasonable, arbitrary and unfair.

29. The current charges assessed by Verna Hills Neighborhood Association, Inc. for capital improvements are unreasonable and unfair because there has been no feasibility study performed by competent engineers as to the need for replacement of the physical plant.

30. In the event a properly conducted feasibility study confirms the sewage treatment plan should be replaced within the next ten years, the current property owners are not responsible for paying for expanding the plant capacity and any capital improvement assessment which attempts to collect funds for the expansion of the existing plant is unreasonable and unfair.

31. The portion of the sanitary sewer service charges assessed for the purpose of collecting the Verna Hills Neighborhood Association membership dues is not related to sanitary sewer services and is unlawfully being assessed against the Co-Complainants because they are not members of the Verna Hills Neighborhood Association.

WHEREFORE, the Co-Complainants ask the Public Service Commission to:

- a. Order the Defendant to roll back the sanitary sewer service charges to the rates in effect prior to January 1997 and refund to the residents of Verna Hills Subdivision the amount of rate increase collected since January 1997;
- b. Investigate the charges and rates of the Defendant to determine whether any rate increase is justified based on the cost of providing only the sewage treatment services and maintaining the existing treatment plant at its current level of capacity;
- c. Order the Defendant to conduct a feasibility study to be performed by an engineer qualified in the area of water and wastewater treatment;

d. In the event said study confirms the need to replace the existing sewage treatment plant, mandate the Defendant seek Commission approval before entering into any procurement contract with said Order to provide for notice to all Verna Hills subdivision property owners and opportunity to be heard on the issue;

e. Order the Defendant to provide itemized billing statements through its agent, Kentucky-American Water Company;

f. Order the Defendant to refund any amount of money collected through its billing agent which is attributable to Verna Hills Neighborhood Association membership dues and to cease and desist any further sanitary sewer service billing practices which attempt to collect funds for any purpose other than the costs associated with providing sewage treatment services; and

g. Order the Defendant to pay the Co-Complainants' costs and reasonable attorney fees associated with this action.

Respectfully submitted,



EDWARD L. YANCY
Attorney At Law
P.O. Box 4308
Lexington, Kentucky 40544-4308
(606)252-7802
Counsel for Co-Complainants

Mailed 4/22/99 1st time.

Mailed 5/12/99 2nd time, cert. mail

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF VERNA HILLS)
NEIGHBORHOOD ASSOCIATION, INC. FOR AN)
ORDER AUTHORIZING VERNA HILLS LTD. TO) CASE NO. 93-315
TRANSFER ITS ASSETS TO APPLICANT AND FOR)
DETERMINATION OF JURISDICTIONAL STATUS)

RECEIVED

SEP 20 1993

O R D E R

Division of Financial Analysis

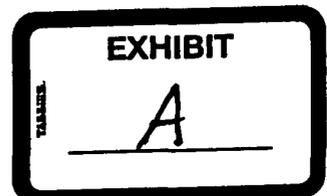
Verna Hills Neighborhood Association, Inc. ("Neighborhood Association") has applied for Commission approval of its proposed acquisition of the sewage treatment facilities of Verna Hills, Ltd. ("Verna Hills"). It also seeks a declaratory ruling on its jurisdictional status after this acquisition.

After reviewing the application and being otherwise sufficiently advised, the Commission finds as follows:

1. Verna Hills is a Kentucky corporation which owns and operates the subdivision treatment facility plant providing sewer service for compensation to the residents of the Verna Hills Subdivision of Clark County, Kentucky, and is a utility under Commission jurisdiction. KRS 278.010(3)(f).

2. The Neighborhood Association is a non-stock, non-profit corporation organized under the provisions of KRS Chapter 273 and composed of all real property owners within the Verna Hills Subdivision.

3. The Neighborhood Association's members depend upon Verna Hills sewage treatment facilities for sewer service. No other



public or private sewage treatment facility provides service to the Verna Hills Subdivision.

4. Verna Hills has agreed to the transfer of its sewage treatment facilities to the Neighborhood Association.

5. The Neighborhood Association has retained a certified wastewater treatment plant operator to operate the sewage treatment facilities.

6. The Neighborhood Association's members are served by Verna Hills' sewage treatment facilities and have a significant financial interest in their maintenance and operation. Moreover, the Neighborhood Association has the authority to assess its members for expenses related to the maintenance and operation of these facilities. This ability to assess its members is adequate evidence of its financial integrity to ensure the continuity of service. No third party beneficiary agreement is required. 807 KAR 5:071, Section 3(1)(a).

7. The Neighborhood Association has the financial, technical, and managerial abilities to provide reasonable service.

8. The characterization of service as public depends "upon whether or not it is open to the use of the public who may require it, to the extent of its capacity." Ambridge v. Pub. Serv. Comm'n of Pennsylvania, 165 A.47, 49 (Pa. Super. 1933). "One offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities." North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966).

9. After the proposed transfer is completed, the sewage treatment facilities will serve a defined, privileged, and limited group -- the Neighborhood Association's members. The facilities will not be serving the public. The Neighborhood Association will not, therefore, be a utility. KRS 278.010. See also Lockwood Water Users Ass'n v. Anderson, 542 P.2d 1217 (Mont. 1975); Re Stonecrest Manor Water Service, 13 PUR3d 123 (Conn. P.U.C. 1956).

IT IS THEREFORE ORDERED that:

1. The proposed transfer of sewage treatment facilities from Verna Hills to the Neighborhood Association is approved.

2. Within 10 days of the date of completion of transfer, the Neighborhood Association shall advise the Commission in writing of its completion.

3. Until the transfer has occurred, the sewage treatment facility shall remain under Commission jurisdiction.

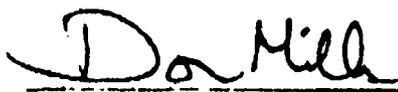
4. Within 30 days of the completion of transfer, Verna Hills shall submit a complete and accurate annual report for the period from January 1, 1993 to the date of transfer.

5. Upon completion of the transfer, the Neighborhood Association will not be a utility subject to Commission jurisdiction. Any subsequent change in the Neighborhood Association's membership policies or its provision of service to persons outside the existing Verna Hills Subdivision, however, may subject the Neighborhood Association to Commission jurisdiction.

Done at Frankfort, Kentucky, this 16th day of September, 1993.

By the Commission

ATTEST:



Executive Director

THIS SERVICE AGREEMENT is made and entered into this 21st
day of November, 1996, by and between BOONESBORO WATER
ASSOCIATION, INC., 136 Hud Road, Winchester, Kentucky 40391,
(hereinafter referred to as "BWA"), and VERNA HILLS NEIGHBORHOOD
ASSOCIATION, INC. (hereinafter referred to as "VHNA"), whose
address is Post Office Box 4377, Winchester, Kentucky 40392.

WITNESSETH: That, whereas, VHNA is the operator of the
sanitary sewer system and appurtenances thereto serving the sub-
division of Verna Hills, Clark County, Kentucky; and

WHEREAS, VHNA has established charges for sanitary sewer
services based upon water usage by its customers; and

WHEREAS, BWA is engaged in the business of providing water
service to certain areas or territories within Clark County,
Kentucky, including but not limited to Verna Hills Subdivision,
located on the north side of U. S. 60 in Clark County, Kentucky;
and

WHEREAS, VHNA has requested BWA to provide billing services
for the sewer charges assessed to the residents of Verna Hills
Subdivision, and

WHEREAS, BWA is willing to provide this billing service,
under conditions specified herein;

NOW, THEREFORE, for and in consideration of the mutual
benefits to be derived by the parties hereto, the parties covenant
and agree as follows:

1. VHNA shall notify their customers by direct mail about
this agreement including the date or month that BWA will begin
providing this billing service. A copy of this letter will be
furnished BWA for inclusion in each customers' file.

EXHIBIT

B

2. VHNA shall coordinate the sewer billing date to correspond to the billing date for water service.

3. VHNA shall coordinate the due date of the sewer bill to the water bills to eliminate multiple disconnects. The date on which the sewer bill becomes delinquent will correspond with date the water bill becomes delinquent.

4. VHNA shall coordinate the changeover from a flat fee to billings based on water usage and shall bill and collect for any partial months caused by this change.

5. VHNA shall adopt a late fee charge compatible with the late fee charged water customers by BWA.

6. BWA shall compute each sewer bill based on the water usage and shall include this amount as a second line on the water bill.

7. BWA shall maintain an individual account for the Verna Hills Neighborhood Association in their accounting system in order to identify all charges and collections applicable to the Verna Hills sewer charges.

8. In the event a customer does not pay the water and/or sewer bill by the due date, BWA will initiate a letter to the customer giving notification that their account is past due and if payment is not received by the specified date, their service will be discontinued and there will be a fee for reinstating the service. This fee is retained by BWA to cover the costs of reinstating the service once the charges and fees have been paid. VHNA shall indemnify and hold harmless BWA from all costs, including reasonable attorneys' fees, arising out of such termination of sewer service.

charges billed for each month with the minimum charge to be \$200. A check will be issued by BWA no later than the 25th of each month for the amount of collections for the month less the BWA fee for billing. A list of accounts collected and accounts that are delinquent will be furnished to VHNA along with the check.

10. In the event a customer moves leaving an unpaid balance, BWA will notify VHNA and it will be the responsibility of the VHNA to pursue collection of the sewer charges.

11. This agreement shall become effective on the day and year first above written and shall remain in effect until terminated by either party giving ninety (90) days advance notice in writing to the other party.

This Agreement has been executed by the parties hereto, by their appropriate authorized representatives, and a certified copy of the resolutions of the governing authorities of each is attached hereto.

BOONESBORO WATER ASSOCIATION, INC.

BY: James A. Adams

VERNA HILLS NEIGHBORHOOD ASSOCIATION, INC.

BY: B. Mc Cord
B. Mc Cord
President

RESOLUTION

At the regular meeting of the Board of Directors of the Boonesboro Water Association, Inc., duly held on the 14th day of November 1996, the following resolution, which is still in force and effect, was duly adopted and a written record thereof made, namely:

"RESOLVED, that the President and Secretary/Treasurer be and they are hereby authorized on behalf of the Association to execute an agreement with the Verna Hills Neighborhood Association, Inc. to provide billing services to the Verna Hills Neighborhood Association for their sewer charges."

TYPED WRITTEN NAME	TITLE	SIGNATURE
<u>Harold A. Adams</u>	President	<u>Harold A. Adams</u>
<u>David A. Sizemore</u>	Secretary/Treasurer	<u>David A. Sizemore</u>

"IT IS FURTHER RESOLVED, that all parties involved are authorized to rely upon the aforesaid resolution until receipt by it of written notice of any change or revocation thereof."

We certify that the above is a true copy of a resolution adopted under date given, is still in effect and it does not conflict with any of the by-laws of the corporation.

Signed and delivered this 14th day of November 1996.

Harold A. Adams
President

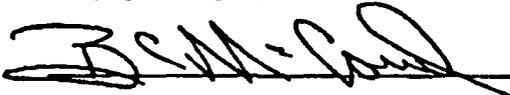
Corporate Seal

David A. Sizemore
Secretary/Treasurer

RESOLUTION

At the regular meeting of the Board of Directors of the Verna Hills Neighborhood Association, Inc., duly held on the 21st day of November 1996, the following resolution, which is still in force and effect, was duly adopted and a written record thereof made, namely:

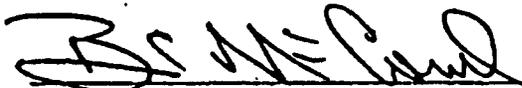
"RESOLVED, that the President and the Secretary be and they are hereby authorized on behalf of the Association to execute an agreement with the Boonesboro Water Association, Inc. for Boonesboro Water Association to provide billing services for the Verna Hills sewer charges."

TYPEWRITTEN NAME	TITLE	SIGNATURE
B. C. McCord	President	
Loretta Carbine	Secretary	

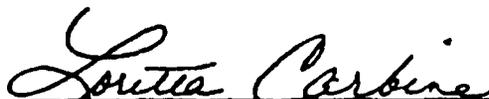
"IT IS FURTHER RESOLVED, that all parties involved are authorized to rely upon the aforesaid resolution until receipt by it of written notice of any change or revocation thereof."

We certify that the above is a true copy of a resolution adopted under date given, is still in effect and it does not conflict with any of the by-laws of the corporation.

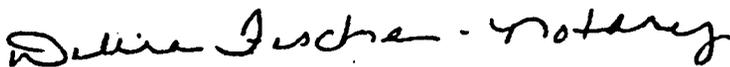
Signed and delivered this 21st day of November 1996.



President



Secretary



7-13-97

1997 SEWER RATE OPPOSITION - VERNA HILLS

as explained by Baird Fraser, and understood by Loretta Carbine

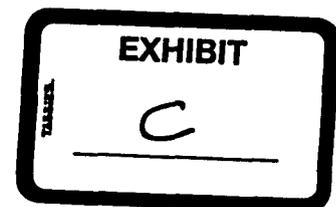
January, 1997

Observations:

- Sewer Rate Comparison - Bluegrass ADD Cities over Population 2,500 (attached)
Verna Hills new rates - very high.
- Don R. Hassall, Bluegrass Area Development District has indicated cost of replacement to be about \$141,000 for a 30,000 gpd system (larger than VI I)
- There are companies that offer synthetic rubber liners for digesters, when required.
- There are SRF (State Revolving Funds) loans available, if under the PSC. Private, as Verna Hills, may not be eligible, but possibility could be pursued. These loans are very low interest, even in the 2% range.
- WMU will send a plant inspector, at some \$90 per hour, 6 - 7 hours, for full inspection and recommendations. (Total cost: approx. \$700)

Opposition Requires:

- Rate back to \$20.40, retroactive to 1/1/97
- Inspection and recommendations regarding future hazards, major expenses, replacement.
- Committee of residents, consisting of at least 3 members, to study rates and make recommendations to the Board.
- Opposition readily suggests a "Minimum Charge", with much more reasonable rates
- Opposition has no problem with BWA administering Sewer billing, as cost is offset by savings of the bookkeeper position.
- Opposition has no problem with an "Escrow" or "Depreciation" account, but does seriously question the dollar figures needed, and how to attain them. Expects that all residents will be fully aware of accounting on an ongoing basis.
- Opposition has hired an attorney to pursue the legalities of the Neighborhood Assoc.. recent actions, and future. i.e. would Verna Hills be better off being under the Public Service Commission?



1/07 SEWER RATE OPPOSITION PETITION - VERNA HILLS

Board Representative	Homes Represented	Voted YES	Voted NO	Did Not Vote
Randy Johnson	16	3	1	11
Trudy Glover	15	7	1	7
Butch McCord	16	9	1	6
Clarietta Witt	13	6	1	6
Loretta Carbine	15	9	1	5
Larry Neavill	17	16	1	
Todd Peyton	14	6	1	7
Fred Brown	18	13	2	3
Jim Greenc	14	11	0	3
Kathy Keller	13	10	3	5
	156	90	12	53
65% of Residents Voted				
58% of Residents Voted in favor of petition, which read: "Would you as a resident of Verna Hills, and a Member of the association, prefer to maintain the \$20.40 per month sewer rate, pending professional advice as to whether the neighborhood will be in need of a new sewer treatment facility within the next 10 years and, if so, how such facility will be financed?"				

ATTACHMENT
#2

DON R. HASSALL, P. E.
 Assistant Executive Director

TABLE 2
SEWER RATE COMPARISON
 (In Gallons and Cubic Feet)
 for
 Bluegrass ADD Cities Over Population 2,500

City	Effective Date for Rates	Min. Bill	Min. Quantity (gal.)	Cost Per Month For:										% Dev. from Mean	Rank	% Dev. from Mean	300,000 Gallons (40,000 cf)	Rank	% Dev. from Mean
				3,000 Gallons (400 cf)	4,000 Gallons (533 cf)	6,000 Gallons (800 cf)	30,000 Gallons (4,000 cf)	300,000 Gallons (40,000 cf)											
Berea	Apr-85	\$6.35	1500	\$11.15	\$14.34	\$20.75	\$97.55	\$961.55	19	15	14	19	19	14	21	15	24		
Cynthiana	Jul-92	4.51	2000	6.34	8.17	11.83	55.75	549.85	-32	4	4	-32	4	-31	5	-28			
Danville	Nov-92	2.33	0	6.56	7.97	10.79	44.65	927.16*	-30	2	2	-38	2	-45	13	19			
Frankfort	Aug-94	5.48	2000	8.22	10.86	16.44	82.20**	852.00*	-12	7	8	-6	1	1	12	10			
Georgetown	Jul-83	6.00	2000	10.28	14.56	23.12	125.84	1,281.44	10	16	16	32	17	56	17	65			
Harrodsburg	Mar-80	6.25	1875	9.70	12.76	18.80	86.50	720.50	4	11	12	7	7	7	9	-7			
Irvine	Nov-92	6.43	2000	10.07	12.52	17.42	62.32	472.82	8	9	9	0	5	-23	3	-39			
Lancaster	Jan-90	4.91	1000	14.73	19.64	29.46	147.30	1,473.00	57	17	18	68	18	83	18	90			
Lawrenceburg	Jul-91	7.80	2000	10.90	14.00	20.20	86.60	596.60	17	13	13	15	13	8	6	-23			
Lexington	Jul-92	0.00	0	5.92	8.31	13.12	72.00**	720.00*	37	5	5	-25	7	-12	8	-7			
Nicholasville	Aug-89	2.60	0	10.43	13.04	18.26	80.90	785.60	11	12	11	4	9	0	10	1			
Paris	Jan-91	7.30	2000	9.55	11.80	16.30	64.30	478.30	2	8	7	-7	6	-20	4	-38			
Richmond	Apr-83	4.84	2250	6.24	8.10	11.68	51.36	401.86	8	3	3	-33	3	-36	2	-48			
Stantford	Aug-92	7.20	2000	9.91	12.62	18.04	83.08	814.78	6	10	10	3	11	3	11	5			
Stanton	Sep-87	10.35	1000	16.55	19.65	25.85	100.25	937.25	18	18	17	48	15	24	14	21			
Versailles	Jul-92	2.10	1000	3.91	4.81	6.62	26.48	244.64	1	1	1	-62	1	-67	1	-69			
Wilmore	Jul-94	4.83	2000	7.36	9.89	14.95	75.67	701.27	6	6	6	-15	8	-6	7	-10			
Winchester	Nov-92	2.68	750	10.72	14.28	21.44	107.20	1,072.00	14	14	15	23	16	33	16	38			
Mean		\$5.11		\$9.36	\$12.08	\$17.50	\$80.55	\$777.26											

* Industrial Rate
 ** Commercial Rate
 21.00 29.00 42.00 210.00 2100.00

About the **NSFC**

The National Small Flows Clearinghouse (NSFC) was established in 1977 with the passage of the Clean Water Act to provide technical assistance and information services about "small flows" wastewater treatment systems. A "small flows" system is one that has one million gallons or less of wastewater flowing through it each day, ranging from septic systems to small sewage treatment plants.

Funded by the U.S. Environmental Protection Agency, the NSFC provides information about innovative, low-cost wastewater treatments for small communities, those with populations less than 10,000. Emphasis is placed on finding practical, alternative solutions for "small flows" wastewater problems.

NSFC helps homeowners, renters, citizens' groups, local industry leaders, research scientists, educators, local government officials, state government officials, consultants, manufacturers, operators and maintainers, contractors, and related professionals. The program addresses a range of wastewater-related topics, including:

- treatment technologies,
- design and monitoring information,
- financial issues,
- planning strategies,
- regulations, and
- education.

The NSFC is one of three "sister" organizations located at West Virginia University. The National Drinking Water Clearinghouse (NDWC) offers a range of information services about small community drinking water issues. The National Environmental Training Center for Small Communities (NETCSC) provides training assistance information, develops courses, and conducts training to help improve drinking water, wastewater, and solid waste services in communities of less than 10,000.

While each of the three organizations has a separate mission and distinct goals, they work collectively to protect human health and the environment by providing a one-stop shop for small community drinking water, wastewater, and environmental training information and technical assistance.



[NSFC CONTENTS / CONTACT US](#)

Visit our sister organizations' sites for more information on environmental training and drinking water treatment solutions for small communities.

[National Drinking Water Clearinghouse](#) / [National Environmental Training Center for Small Communities](#) / [National Drinking Water Clearinghouse](#)

Please bookmark us at [www.epa.gov/nsfc](#), and visit frequently for updates to this site.
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This page last modified on Monday, November 11, 1996

Norton
701 Princeton Dr

VERNA HILLS NEIGHBORHOOD ASSOCIATION

P. O. Box 4377
Winchester, KY 40392 - 4377

January 19, 1997

TO: Joe Stearns, Baird Fraser, Chris Warner

RE: OPPOSITION TO SEWER TREATMENT RATES

The Verna Hills Neighborhood Association makes the following proposal, to resolve the issue of opposition to recent Sewer Treatment rates of \$7.00 per 1,000, billed by Boonesboro Water.

- 1) Effective February 1, 1997, rates to be set at
 - A) \$9.00 flat fee for each resident, to be deposited in a Capital Improvements Account.
 - B) Usage rate, based on BWA water usage, of \$4.43 per 1,000 gallons.
- 2) January 1, each year, rates to be adjusted based on the Consumer Price Index, plus 1%.
- 3) Feasibility study, and action to encase the Sewer Treatment Plant Digester (the most likely unit to fail) with concrete, rubber liner, etc., to assure the continued operation of the plant as long as possible, before consideration given to total replacement.

The above proposal, made in good faith and believed to be equitable to all concerned.

Verna Hills Neighborhood Association Board of Directors

Burt McLean
Randy L. Johnson
Terry Thasell
Loretta Carbine

Jim Greene
Paul R. Taylor
Kathy Keller
Christina Witt

EXHIBIT
D

VERNA HILLS - 10 YEAR SEWER TREATMENT PLANT DEPRECIATION PLAN
January, 1997

3 YEAR HISTORY OF VIINA

MEMBERSHIP ACCOUNT (Christmas neighborhood activities/donations, flowers at entrance, future rebuilding of wall at entrance, flower fund, office supplies, expenses of Newsletter, block parties, etc. i.e. Any expense for good or pleasure of Verna Hills residents, as a whole)

INCOME: \$20.00 per year x 156 = \$3,120
1994 Yr End Balance - \$3,905.18
1995 Yr End Balance - \$5,918.63 (CD - \$5,235.16)
1996 Yr End Balance - \$8,312.46 (CD - \$5,509.56)

SEWER TREATMENT ACCOUNT (Office supplies, and ANY expense incurred within or around fenced area, sewer lines, manholes, pump station. i.e. any expense directly related to the function of the Sewer Treatment Plant (STP)).

INCOME: \$20.40 x 156 = \$3,182.40 per month, x 12 = \$38,188.80 per year

1994 - IN: \$43,028.00	OUT: \$36,749.08	BALANCE END '94: \$13,531.74
1995 - IN: \$39,218.92	OUT: \$39,307.25	BALANCE END '95: \$13,443.41
1996 - IN: \$39,758.70	OUT: \$38,059.81	BALANCE END '96: \$15,142.30

Consumer Price Index (Cost of Living) = 2.9% per year
Lexington Chamber of Commerce, or
U. S. Department of Labor Statistics, Frankfort (502) 564-7976

Average STP expense - 3 years = \$38,072.05 / at 2.9% increase per year, we should use a figure such as \$40,000, or \$42,000, at least, knowing it could increase. Resulting in:
Assumption: Average water usage 790,000 gallons per month (Jan - July 1996)

For \$40,000 income per year, or \$3,335. per month = \$4.22 per 1,000 gallons
(\$3,335 divided by 790 average use)
For \$42,000 income per year, or \$3,500 per month - \$4.43 per 1,000 gallons
(3,500 divided by 790 average use)

DEPRECIATION FUND DOLLARS WOULD BE IN ADDITION TO ABOVE OPERATING EXPENSE FUNDS.

Loretta Carbone

VERNA HILLS - 10 YEAR SEWER TREATMENT PLANT DEPRECIATION PLAN

January, 1997

Assumptions: \$9.00 per month, per residence (156) = \$1,404 per month, \$16,848 per year

\$1,404 per month, 10 years, at 2.9% interest

Your Savings Plan from 1/18/97 through 1/18/07

Savings Goal: 194,798.52

When you want to reach your goal: 10 Years

Savings you have now: 0.00

Annual yield on savings: 2.9 %

Regular contribution amount: 1,404.00 monthly

\$1,404 per month, 10 years, at 5.5% interest

Your Savings Plan from 1/18/97 through 1/18/07

Savings Goal: 222,339.39

When you want to reach your goal: 10 Years

Savings you have now: 0.00

Annual yield on savings: 5.5 %

Regular contribution amount: 1,404.00 monthly

\$1,404 per month, 5 years, at 2.9% interest

Your Savings Plan from 1/18/97 through 1/18/02

Savings Goal: 90,450.10

When you want to reach your goal: 5 Years

Savings you have now: 0.00

Annual yield on savings: 2.9 %

Regular contribution amount: 1,404.00 monthly

\$1,404 per month, 5 years, at 5.5% interest

Your Savings Plan from 1/18/97 through 1/18/02

Savings Goal: 96,377.65

When you want to reach your goal: 5 Years

Savings you have now: 0.00

Annual yield on savings: 5.5 %

Regular contribution amount: 1,404.00 monthly

Based on \$300,000 replacement Cost - at 2.9% interest, 10 years, contribution should be:

Your Savings Plan from 1/18/97 through 1/18/07

Savings Goal: 300,000.00

When you want to reach your goal: 10 Years

Savings you have now: 0.00

Annual yield on savings: 2.9 %

Regular contribution amount: monthly 2,162.23

Loretta Corbino

DELANEY & ASSOCIATES, INC.

(606) 342-4944
FAX (606) 342-8331

WATER AND WASTEWATER EQUIPMENT

February 18, 1997

Ms. Loretta Carbine
Verna Hill Neighborhood Association
P.O. Box 4377
Winchester, Ky 40392-4377

RE: Package Waste Water Treatment Plant

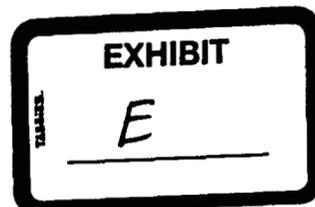
Dear Ms. Carbine:

On February 11th, 1997 I met your operator, Van Bugg. We inspected the existing waste water treatment plant facilities and the pumping station.

There are a number of items that the package plant will probably need within the next year. This would consist of repairs to the return sludge trough, which could be replaced with a PVC pipe. The air header that goes to all the air drops has corroded, and will probably need to be replaced in the near future.

A sewage treatment plant life is hard to determine when you would not be able to use it whatsoever. There is major rusting that has taken place on the surface that we could see, and I would anticipate that 5 years would be the maximum that you would want to consider replacing the unit. There is a good chance, with changes to the sludge return line, air line, sandblasting, and painting to the surface area, may allow the waste water plant to extend 5 years. There would be quite a bit of work needed to accomplish this for the existing steel. Van informed me the blowers and motors are pretty much original, and replacement on these mechanical items could be any day. The comminutor for the grinder in front of the treatment plant has been abandoned. The state is not requiring Van to replace it, as long as a good performance of the plant continues to occur.

We represent Hydro-Aerobics, which is a package plant manufacturer. I have enclosed a general brochure for their treatment plants. Replacement of your existing plant will not be an easy duplication. The only way to replace the waste water treatment plant and use the existing lagoon is to remove the existing plant and place a new one in its place. To accomplish this, you will need



a special permit from the state, and bypass the plant for a minimum of 2 weeks, possibly 3, to install a new plant.

Based on the hydraulic conditions that Van explained to me that occurs at this plant due to infiltration problems, I would recommend that the lagoon be kept as a buffer for the peak flow conditions. If a new plant is installed at the existing lagoon, there would most likely be a need for a surge holding chamber, or another lagoon.

The replacement of the new sewage treatment plant to meet the anticipated new guidelines from the state of Kentucky would require the aeration tanks and clarifiers to be separated by a wall, which doesn't exist now. With a sludge holding tank and the separate chlorine contact tank that you have now, we would anticipate the cost in 1997 prices at \$97,000, with materials delivered to the job site. Installation could vary based on how you would approach it. I would say it would be from \$50,000 - \$70,000 to accommodate the installation. It could even be more depending on how you would approach the removal of the old plant. It may be beneficial if you want to get a more definite installation price to contact a contractor. If that is the case, I could give you a contractor to contact.

In talking to Hydro-Aerobics, budgetary numbers are just what they are. They are budgetary on the cost that we would sell the equipment today. To tell you what it would be in 5 or 10 years is pretty much based on the cost of steel. I would recommend to increase the material cost on a minimum of 4% a year as a factor that would need to be added to the material cost of the waste water treatment plant for your future budgeting.

I would anticipate the pumps and valves at the pump station to be replaced before the package sewage treatment plant. Considering conditions of the wet well cover, the piping, and Van informing me that the pumps have been rebuilt more than once, I would anticipate the replacement of the pumps within 5 years.

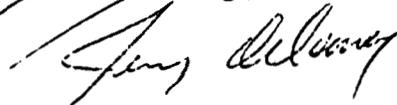
Not knowing the conditions exactly, I cannot give you an exact price on the pumps. Van estimated that the pumps were approximately 10 HP. The existing pumps are ABS submersible pumps, which is the same manufacturer that we represent in submersible type pumps. Costs just to replace the pumps and rail bases would be approximately \$8,000-\$9,000, for today's costs, which would include the aluminum access cover that would be needed on top of the wet well at the same time. The valves and piping that are part of the pump station would normally range an additional \$4,000 material costs. The installation for a changeout of this would most likely be an additional

Ms. Loretta Carbone
February 18, 1997
Page 3

\$8,000. They would have to do this at a lower flow demand time, as well as have a number of people available to do it as quickly as possible, to put it back in operation. It appears that your control panel looks very good and that would not be required to be replaced. With the material costs of approximately \$11,000-\$13,000, and a labor costs of approximately \$6,000-\$8,000, you would probably want to budget an \$21,000 figure for replacement of the pump station.

Based on the information I've acquired in my meeting with Van, these are very preliminary prices. I do believe they will cover the material costs. I am estimating the labor based on other projects we have done. In each case, the labor for the package plant or the pump station could vary. I do have a contractor that is in the Lexington area that would probably assist you on request. I don't believe you could get a formal idea of the installation of this by your deadline of February 20th. The contact would be Brian Nash of NAC Heavy Highway, who I have worked with on a couple of recent package plants that would be able to assist you in reviewing this. Brian's phone number is 606-263-3102.

Sincerely,



Jerry A. Delaney

JAD/djf

F.O. BOX 4377
WINCHESTER, KY. 40392-4377

05-01-98

Mr. & Mrs. Warner
219 Robyn Drive
Winchester, Ky. 40391

Mr. & Mrs. Warner,

As of ~~4-30-98~~ my records indicate we have not received your 1998 Verna Hills Neighborhood Assoc. dues for the amount of \$20.

As stated in previous letter, each household must be a dues paying member of the Verna Hills Neighborhood Assoc. in order to keep the sewage treatment plant a privately owned plant and not subject to the rules and regulations of the Public Service Commission.

Please make your check payable to Verna Hills Neighborhood Association and mark as "Membership Dues". Mail the check to the above address, Attn: Treasurer.

This is your third and final notice for the 1998 Membership Dues. In fairness to all homeowners if payment is not received by 5-30-98, Verna Hills Neighborhood Assoc. will file with Small Claims Court to collect the 1998 Dues in the amount of \$20. The cost of filing is \$36 which is due on the day the file is claimed. Whoever loses the case is liable for the \$36. If you choose to pay the Membership Dues prior to court date but after Verna Hills Neighborhood Association has filed with Small Claims Court, you will be responsible for the \$36 filing fee.

Thank you in advance for your cooperation.

Rebecca A. Frye
Rebecca A. Frye
Treasurer

